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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1935**

## No. 580

BATON ROUGE RICE MILL, INC., PETITIONER,

*vs.*

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

**PETITION FOR CERTIORARI FILED NOVEMBER 11, 1935.**

**CERTIORARI GRANTED NOVEMBER 25, 1935.**

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## INDEX.


| | Page |
|---|---|
| Record from D. C. U. S., Eastern Louisiana | 1 |
| Caption | 1 |
| Bill of complaint | 2 |
| Exhibit "A"—Administrative Rulings Relating to the 1935 Southern Rice Production Adjustment Program | 27 |
| Exhibit "B"—Contract | 38 |
| Exhibit "C"—Section 21 | 48 |
| Answer | 54 |
| Motion to dismiss | 56 |
| Order consolidating all cases for purpose of trial | 58 |
| Affidavit of W. M. Reid | 60 |
| Affidavit of Homer L. Bruce | 64 |
| Joint affidavit of L. J. Bartel, R. F. Gould and J. J. Mayer | 75 |
| Decree | 78 |
| Motion of plaintiff for injunction pending appeal and order denying same | 79 |



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 6, 1935.

—7202-C

| | Original | Print |
|---|---|---|
| Record from D. C. U. S., Eastern Louisiana—Continued. | | |
| Petition for appeal and order allowing same | | 80 |
| Assignment of errors | | 81 |
| Appeal bond | | 82 |
| Præcipe | | 83 |
| Clerk's certificate | | 85 |
| | Original | Print |
| Proceedings in U. S. C. C. A., Fifth Circuit | 86 | 87 |
| Motion for preliminary injunction pending appeal | 86 | 87 |
| Order denying motion for preliminary injunction pending appeal | 97 | 93 |
| Opinion by the Court | 98 | 94 |
| Clerk's certificate (omitted in printing) | 100 | |
| Order allowing certiorari | 101 | 94 |

UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 324 (In Equity).

BATON ROUGE RICE MILL, INC.,

versus

RUFUS W. FONTENOT, INDIVIDUALLY AND AS ACTING UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF LOUISIANA.

Appearances:

Messrs. Baker, Botts, Andrews & Wharton, John P. Bullington, Attorneys for Baton Rouge Rice Mill, Inc., Plaintiff—Appellant.

Rene A. Viosca, Esq., United States Attorney and Robert Weinstein, Asst. U. S. Attorney, appearing on behalf of Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Defendant-Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 29th day of October, 1935, at the City of New Orleans, Louisiana.

TRANSCRIPT OF RECORD.

# BILL OF COMPLAINT & EXHIBITS ANNEXED.

Filed: .....

In the District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Baton Rouge Rice Mill, Inc.,

vs. No. 324 (In Equity).

Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana.

To the Honorable Wayne G. Borah, Judge of the United States District Court, for the Eastern District of Louisiana:

Comes now Baton Rouge Rice Mill, Inc., hereinafter referred to as plaintiff and in the neuter singular, complaining of Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, hereinafter called defendant, and for cause of action shows to the Court as follows:

1.

Plaintiff is a corporation organized under the laws of the State of Louisiana, with its principal office and domicile at Baton Rouge in East Baton Rouge Parish, Louisiana. The defendant is a citizen of the State of Louisiana residing at New Orleans, Louisiana, and is the duly appointed, commissioned, qualified and acting Acting United States Collector of Internal Revenue for the State of Louisiana.

2.

The grounds of jurisdiction of this Court in this case are that this is a suit arising under the Constitution of the United States and the laws of the United States, in of the United States and the laws of the United States, in which the matters in controversy exceed Three Thousand Dollars ($3,000.00), and this suit is also one in which an injunction is sought against an official of the United States to prevent him from unlawfully collecting processing taxes levied by the United States pursuant to certain acts of Congress, more fully set out hereinafter, and to have declared invalid and unconstitutional said acts of Congress in so far as they attempt to provide for the levy, assessment and collection of said processing tax.

3.

Plaintiff is engaged in the business of milling rice and owns and operates a rice mill at Baton Rouge, Louisiana. The milling of said rice, which constitutes processing of said rice under the terms of the Agricultural Adjustment Act, hereinafter referred to, is done wholly within said State and is a matter of intrastate commerce exclusively, being performed in its entirety within the limits of said State wherein plaintiff's rice mill is established and operated.

4.

There was adopted by the 73rd Congress and approved on May 12, 1933, an Act, P. L. No. 10, popularly known as the "Agricultural Adjustment Act," but officially entitled:

"An Act to relieve the existing national Economic emergency by increasing agricultural purchasing power,

to raise revenue for extraordinary expenses incurred by reason of the emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint stock land banks, and for other purposes."

and said Act with its amendments, for convenience hereinafter, will be referred to by its popular title, namely, the Agricultural Adjustment Act.

Said Agricultural Adjustment Act has been amended several times and particularly by an amendment approved August 24, 1935, which amendment is hereinafter referred to as the Amendment of August 24, 1935.

5.

The policy to be effectuated by the enactment of said Act, prior to the Amendment of August 24, 1935, was declared by Congress in Section 2 to be as follows:

"It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of argicultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities there-

in at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914."

By said Amendment of August 24, 1935, Subsection (1) of said Section 2 was amended by inserting at the beginning thereof the words

"Through the exercise of the powers conferred upon the Secretary of Agriculture under this title."

and Subsections (2) and (3) were stricken out and the following inserted in lieu thereof:

"(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

Plaintiff alleges that under no provision of the Constitution of the United States is the Congress of the United States authorized to provide for said processing taxes for the purpose of accomplishing any of

said policies above set forth, and the levy, assessment and collection of said taxes have been provided for in said Act, not for the purpose of raising revenue, but for the purpose of accomplishing the things set out in said declaration of policy of Congress and for said reasons the levy, assessment and collection of said taxes are wholly illegal, unlawful and unwarranted under the Constitution of the United States.

6.

Section 8 of said Agricultural Adjustment Act provides in substance that, in order to effectuate the declared policy of the Act, the Secretary of Agriculture shall have power to provide for a reduction and adjustment in the acreage and production for market, or both, of any basic agricultural commodity, including rice, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith, in such amounts as the Secretary finds best calculated to effectuate the declared policy of the Act, to be paid out of the moneys hereinafter referred to.

Section 9(a) of said Agricultural Adjustment Act levies the processing taxes thereinafter provided. It then provides that when the Secretary of Agriculture determines that any one or more payments (including said rental or benefit payments) authorized to be made under Section 8 of said Act or to be made with respect to any basic agricultural commodity, he shall proclaim such determination and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. Said Act, however. provided that with respect to rice the processing tax for the period from April 1, 1935, to July 31, 1936, should be at the rate of 1c

per pound of rough rice. Under a similar provision of said Act before being amended by the Amendment of August 24, 1935, the Secretary was directed to proclaim, and did proclaim, before April 1, 1935, that rental or benefit payments would be made with respect to rice and the processing tax of 1c per pound of rough rice would be in effect on and after April 1, 1935.

Section 9(b) of said Agricultural Adjustment Act provides that the processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, as those terms are defined in the Act, plus such percentage of such difference, not to exceed 20 per centum, as the Secretary may determine, will result in the collection in any marketing year of an amount of tax equal to (A) the amount of credits or refunds which he estimates will be allowed during such period with respect to the commodity and (B) the amount of the tax which he estimates would have been collected during such period upon all processings of such commodity exempt from tax because such processings are done by or for a State or a political subdivision or an institution thereof, except that the processing tax on rice for the period above mentioned should be at the rate of 1c per pound of rough rice.

Section 12(a) of said Act, prior to the Amendment of August 24, 1935, appropriated the sum of $100,000,000.00 to be available to the Secretary of Agriculture for administrative expenses under Title 1 of said Act and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under Part 2 of said Title 1. Section 12(a) of said Act, after said amendment, appropriated the said sum of $100,000,000.00 to the Secretary for administrative expenses under Title 1

and for payments authorized to be made under Section 8, including said rental and benefit payments made with respect to adjustment and reduction in acreage or production for market of basic agricultural commodities, including rice.

Section 12(b) of said Act, prior to said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00, the proceeds derived from all processing taxes imposed under said Title 1 were appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and administrative expenses, rental and benefit payments, and refunds on taxes. Section 12 (b) of said Act as amended by said Amendment of August 24, 1935, provided that, in addition to said $100,000,000.00 a further sum was appropriated to be available to the Secretary of Agriculture for payments authorized to be made under said Section 8, including said rental and benefit payments, said sum so appropriated to be equal to the proceeds derived from all processing taxes imposed under said Act.

7.

Acting pursuant to the purported authority given to him under said Agricultural Adjustment Act, the Secretary of Agriculture under date of April 18, 1935, through R. G. Tugwell, the then acting Secretary of Agriculture, promulgated certain rulings relating to the 1935 Southern Rice Production Adjustment Program, a copy of which rulings is attached hereto as Exhibit A and made a part hereof as if fully copied herein at this point. Under said rulings the Secretary of Agriculture allotted acreage to be planted in rice and barrels of rice to be produced. (a barrel being defined as being one hundred sixty-two pounds of rough rice)

in the States of Arkansas, Louisiana and Texas as follows:

| | Acres. | Barrels. |
|---|---|---|
| Arkansas ..... | 135,000 | 1,834,722 |
| Louisiana .... | 364,500 | 3,898,333 |
| Texas ..... | 142,500 | 2,010,833 |

Said rulings provided for a State Committee appointed by the Secretary of Agriculture for each State and for various forms and applications to be filled out by those desiring to produce rice and to be filed with the said State Committee. Said rulings provided that the base period for Texas should be the years 1931 to 1933, inclusive, and for Arkansas and Louisiana should be the years 1929 to 1933, inclusive. Said rulings further provided that the said State Committee should make an allotment to a producer applying to the Secretary of Agriculture through said State Committee for permission to grow rice during the year 1935, by taking the average acreage planted by such producer during the base period applicable to him and by reducing this result by 20% in Arkansas and in Louisiana and by 22% in Texas; and should give an allotment or permission to said producer to plant said 80% (in the case of Arkansas and Louisiana) or 78% (in the case of Texas) of the average acreage planted by him during said base period. Said rulings further provided for said State Committee to allot to each such producer a quota of barrels of rice that he might produce during the year 1935 by allotting to him 80% (if in Arkansas or Louisiana) or 78% (if in Texas) of the average number of barrels of rice raised by him during said base period.

If a producer had produced rice during any of the years constituting his base period, he was eligible to obtain an allotment and a quota from said State Committee, and if he should obtain such allotment and

quota, he was then eligible to execute a contract with the Secretary of Agriculture in the form shown by Exhibit B attached hereto and made a part hereof for all purposes as if copied in full at this point. If said producer executed said contract and it was accepted by the Secretary, he was then eligible for the benefit payments to be made by the Secretary as provided for in said agreement. However, if a producer had not produced rice during any of the years constituting his base period, he was not eligible to execute said contract with the Secretary and was not eligible for the benefit payments provided for therein. Likewise, if a producer did not execute such contract, or if he executed such contract and it was not accepted by the Secretary, he was not eligible for the benefit payments as provided for therein.

Plaintiff alleges that said processing taxes were not levied under the taxing power of the United States and for the purpose of raising revenue, but were levied for the purpose of raising money with which the Secretary of Agriculture could make rental or benefit payments to producers of agricultural products, including rice, and for the purpose of controlling, regulating, and reducing the amount of acreage that would be planted to rice and the amount of rice that would be grown, and to accomplish the purposes set out in Section 2 of said Act, and that the Congress of the United States had no authority under the Constitution of the United States to levy said processing taxes for said purpose and for said objects.

8.

Section 8 further provides that, in order to effectuate the declared policy of the Act, the Secretary is empowered to provide for a reduction in acreage or a reduction in production of any

basic agricultural commodity through agreements with producers, and to provide for rental or benefit payments in connection therewith in such amounts as the Secretary deems fair and reasonable, but there is no standard or measure established or provided in said Act by which the said Secretary shall be guided in providing for said reduction in acreage or production or in the amount of the rental or benefit payments, and said provisions are wholly invalid and violative of Article 1 of the Constitution of the United States which vests all of the legislative power in the Congress of the United States and is an invalid and unconstitutional delegation of legislative power by Congress to the Secretary of Agriculture.

Plaintiff further alleges that the Secretary has made no findings whatsoever, and if he has made any such findings, they are wholly insufficient to support his action in providing said method of reduction of acreage and production of rice as above set forth, and his said regulations and provisions concerning said reduction of acreage and reduction of production and amounts of benefit payments are wholly arbitrary and unsupported by any findings, or at least any sufficient findings, by the Secretary of Agriculture and are not authorized by said Act or the Constitution of the United States.

9.

Section 9(b) of said Act provides that if the Secretary of Agriculture has reason to believe that the processing tax levied on any commodity will cause such reduction in the quantity of such production domestically consumed as to result in the accumulation of surplus stock thereof or in the depreciation of the farm price of the commodity, then he shall cause an investigation to be made on due notice and opportunity for hearing to interested parties, and if thereupon the

Secretary finds that such result will occur, then the processing tax on such commodity shall be at such rate as will prevent such accumulation of surplus stock and depreciation of said farm price. Said provision applies to the processing tax levied upon rice. Said provision sets no proper standard by which the Secretary shall be guided in determining the rate of the processing tax on rice or how long said tax of one cent (1c) per pound shall remain on rice, and the continuation of said processing tax being dependent upon said action by the Secretary, said provision is an unconstitutional delegation of legislative power to the Secretary of Agriculture in violation of Article 1 of said Constitution vesting the legislative power in the Congress, and for said reasons the said Act in levying said processing tax is void and illegal.

10.

In addition to the foregoing reasons, the said Agricultural Adjustment Act and its provisions for the levying, assessment and collection of said processing taxes upon rice processed by this plaintiff are void, illegal and in violation of the Constitution of the United States for the following reasons:

1. They are an attempt and effort by the United States to regulate, control and reduce the production of certain agricultural commodities specified in said Act, including rice. The so-called processing taxes imposed by said Act are an integral part of the scheme, attempt and effort of regulating, controlling and reducing the production of such commodities, which attempt, effort and scheme is not within the scope of any of the powers vested in the Congress by the Constitution, and if said power exists as a governmental function, it is therefore within the powers reserved to the States as expressly provided by the Tenth Amendment to the Constitution.

2. The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1 of the Constitution to levy and collect taxes, duties, imposts and excises, in that they are not imposed to pay the debts or to provide for the common defense or the general welfare of the United States, but were imposed for the benefit of a particular class of individuals, namely, the producers of the various agricultural commodities specified in said Act who conform to the conditions laid down in said Act.

3. The said Act and provisions for the levy, assessment and collection of said processing taxes violates the provisions of the Fifth Amendment to the Constitution since the so-called processing taxes constitute the deprivation of the property of one class of citizens, including the plaintiff, namely, processors of said specified commodities, including rice, without due process of law, in that such processing taxes constitute the taking of the property of this class of citizens, including the plaintiff, not for a public purpose but for a private purpose, to-wit, the payment of gratuities or bounties or benefit payments to another class of persons, namely, the producers of the designated agricultural commodities, including rice, and particularly since this taking is without just compensation to the plaintiff and said processors.

4. Said so-called processing taxes levied by the Act are taxes in name only and not in fact. They constitute merely an exactment and imposition by the Government for the purpose, not of raising revenue for the support of the government, but of raising the price for farm products and adjusting farm income and for carrying out the policy of said Act as hereinabove set forth and for the purpose of enabling the government to carry out and effectuate the said attempt, effort and scheme of the United States as hereinabove set out.

5. Under the terms of Article 1, Section 1, of the Constitution of the United States, the legislative powers granted to the Federal Government are vested in the Congress; whereas, the said Act purports to vest powers in the Secretary of Agriculture, who alone is to determine, at his own discretion and without any definite standard fixed by Congress, the method of bringing about a reduction or adjustment in acreage and production of agricultural commodities, including rice; to provide for rental or benefit payments in connection therewith in such amounts as the Secretary may deem fair and reasonable; to determine how long the said tax of 1c per pound upon the processing of rice shall remain in effect, and if the Secretary changes said rate, what rate shall be fixed. In said respects the said Act involves an invalid delegation to the Secretary of Agriculture by Congress of powers vested exclusively in it by the Constitution and because of said things the said Act delegates said legislative powers to the Secretary of Agriculture and said powers are conferred exclusively on Congress by said Article 1, Section 1; Article 1, Section 8, clause 18; Article 11, Section 1; Article 1, Section 7, clause 1; and Article 1, Section 9, clause 7 of the Constitution.

6. The said taxes if construed as direct, violate Article 1, Section 9, clause 4, and Article 1, Section 2, clause 3 of the Constitution, because not apportioned according to population.

7. The said taxes are not excise taxes, and are not uniform throughout the United States as required by Article 1, Section 8, clause 1.

8. The said alleged taxes cannot be levied under Article 1, Section 8, clause 3, regulating commerce, because neither the production nor processing of commodities, including the processing of rice done by plaintiff, is in interstate commerce and cannot be regulated

by Congress and in so far as this plaintiff is concerned, its processing of said rice is not interstate commerce and cannot be regulated by Congress.

11.

Under the terms of said Act and orders of the Secretary of Agriculture and the Secretary of the Treasury, the plaintiff is required to file returns with the defendant on or before the 30th day of October, 1935, showing the amount of rice processed by the plaintiff during the month of September, 1935, and the amount of said so-called processing tax on account of said rice processed by the plaintiff during said month, and plaintiff is required to pay said amount to the defendant on or before October 30, 1935. The amount of said processing taxes on account of the rice processed by the plaintiff during said month of September is $51,259.14. The defendant as said Collector of Internal Revenue is charged with the duty of collecting said tax, and if the plaintiff does not make said payment on or before October 30, 1935, the said defendant will assess said tax against the plaintiff and will serve upon the plaintiff notice and demand for the payment of said tax, and the plaintiff will be allowed ten days from the receipt of such notice and demand within which to pay said tax. In the event of failure to pay said tax within said time, the defendant will assess against the plaintiff a penalty equal to 5 per centum of the amount of the tax and interest on the tax at the rate of 1 per centum from the due date of the tax until it is paid; if plaintiff fails to pay said tax within the ten days after receipt of said notice and demand, the defendant will proceed to collect the tax, penalty and interest by filing a notice of lien upon all of plaintiff's property, and by distraining upon and selling such of plaintiff's property as may be necessary in order to realize the amount of said tax, penalties and interest. Additional processing taxes for the months sub-

sequent to September, 1935, will accrue and will be assessed against and collected from plaintiff, just as the processing tax for the month of September will be, in the manner described, unless the defendant is restrained and enjoined from assessing and collecting said taxes. Plaintiff has its rice mill at the place stated in paragraph 3 hereof with a large inventory of rough rice and clean rice, bank accounts and cash on hand. Repeated levies upon and distraint of its property from month to month will cause plaintiff irreparable injury and damage, in that such levies and distraints will impair the valuable good-will of its business; will seriously interfere with, if not prevent, the actual operations of its plant and the sales of its product; and will result in a permanent injury to its business and good-will. Furthermore the tax, if once paid by plaintiff, will be irretrievably lost to plaintiff, to its great and irreparable injury.

**12.**

Plaintiff further shows that by the Amendment of August 24, 1935, Section 30, of said amendment added a new section to the Agricultural Adjustment Act designated as Section 21, a copy of which Section 21 is attached hereto and marked Exhibit C. Plaintiff does not have an adequate and complete remedy at law as to taxes levied and assessed under said Act because of the provisions of Section 21(d) of said Agricultural Adjustment Act. Under Section 21(d) a recovery will not be allowed to the plaintiff for any amount of the tax paid by plaintiff unless it shall be established that the plaintiff has not directly or indirectly included such amount in the price of the rice with respect to which it was imposed or passed on any part of any such amount to the vendee, or included any part of such amount in the charge or fee for processing, and that the price paid by the plaintiff for rough rice was not reduced by any part of such amount.

Plaintiff states that it is an impossibility to prove or attempt to prove what portion, if any, of the processing taxes paid by it has been either deducted from the purchase price of rough rice or added to the selling price of clean rice for the following reasons:

Rice millers buy rough rice at the market price, a price that is established by the competitive bidding of the many rice millers. Rough rice is bought in large quantities and kept on an average of several months before the clean rice made from it is sold, and because of said facts the miller has no way of definitely knowing at the time of the purchase of rough rice whether he will make a profit or loss on the milling and selling of rice. A major factor in determining the market price of rough rice is the market price of clean rice at the time the rough rice is bought but there is no assurance, however, that the market price for clean rice will be the same at the time the miller actually sells the clean rice milled from the rough rice.

The miller who buys rough rice must pay the market price as established under these conditions, and has no power to fix or make the market price himself. Having no power to make prices, he cannot arbitrarily depress the market price of rice in order to pass the processing tax back to the producer.

Likewise, the miller sells the clean rice in competition with many other rice millers, and also in competition with many other food products, such as wheat, potatoes, beans and other food products, that can be substituted for rice. Under such circumstances, if the price of clean rice is pushed too high, consumers will shift to other products with the result that the demand for rice will decline until the price of rice falls to where people will buy it instead of other competitive commodities. Under these circumstances the rice miller cannot fix or make

the price for clean rice, and cannot arbitrarily increase the price of clean rice in order to pass the processing tax on to the purchaser of clean rice.

In addition, rough rice when milled produces many grades of rice and products thereof. It produces extra fancy head rice, fancy head rice, head rice, second head rice, screenings, brewers, polish, bran, and hulls, all of which commodities have varying values, extra fancy rice being the most valuable and the other grades being of less value in the order above set forth. Extra fancy, fancy, head and second head rice are generally sold for human consumption as rice. Screenings are sold to some extent for direct consumption by human beings. Brewers and screenings are a very low priced commodity and are used in general by breweries. Polish, bran and hulls are sold generally for stock feed. Some of such products, particularly brewers, polish, bran and hulls are sold practically always for a less price per pound than is paid for the rough rice per pound. There is no definite proportion by which the price paid for rough rice can be allocated in any way to these different grades of rice; so that it is impossible to tell with any degree of accuracy how much the rice and rice products that have been produced from any particular lot of rough rice have cost, making it impossible to tell what amount of the processing tax, if any, has been passed on to the purchaser of these articles.

Furthermore, the processing tax is levied upon the first processing of the rough rice and must be paid by the end of the calendar month following the month in which the processing occurred. On the other hand, when a lot of rough rice has been processed in any month, some of the grades may be sold immediately, whereas some of the other grades produced from said rice may be kept for several months before being sold, and it is thus impossible to tell how much has been

received for the clean rice and its products that are produced from any month's processing, and it is impossible to tell how much, if any, of said processing tax has been passed on to the purchaser of said clean rice.

Indeed, it is impossible even to determine whether, for any given month, the mill operations have resulted in a gain or loss and it is only at the end of the season that a gain or loss *for the season* can be determined.

In addition, in the cost of rough rice processed during any month, there is an additional item of the cost of the milling of such rice. The cost of milling rice depends upon many factors so that it is impossible to determine what has actually been the cost of milling any particular lot of rice. There are many varieties of rice, some of which have longer grains than others. Different processes of milling must be used for each different kind and variety of rice, and where the plaintiff and other millers have on hand varied and sundry varieties and kinds of rice it is necessary in the operation of the mill to change quickly from one kind of rice to another as the milling of one lot of rice is completed and the milling of another kind begun. In addition, lots of rice of the same variety will vary the one from the other due to the varying amounts of moisture in the rice, varying conditions under which the rice was harvested, and many other factors, which makes it necessary to vary the operation of the rice mill in many respects as between lots of rice. In addition, the output of a mill in barrels per day varies because of all these factors very considerably. Under all the circumstances, it is impossible for a mill to determine the cost to it of the milling of any particular lot of rice, which cost must necessarily enter into a deter-

mination of whether in selling the clean rice it has included any part, or what part, of the processing tax in the price for which it sells its clean rice and rice products.

In addition, owing to the peculiar nature of the rice business and the customary manner of selling rice that prevails in the rice industry, it is impossible for the plaintiff and other rice millers to determine the cost of any particular rice that has gone into the clean rice that is covered by any particular sale. The clean rice that is obtained from any particular lot of rough rice is not sold in the trade by itself alone. At the beginning of the season plaintiff and other rice mills know approximately the different kinds of rice that they will have during the season. In the early part of the season and as the season progresses, plaintiff and other millers make up samples of rice of the kind that they have determined they will be able to supply during the season. Owing to the varied character of clean rice out-turn from rough rice, these samples are made up of mixtures of different kinds of rice. It has been found impossible to make up such samples entirely of one kind of rice from one lot of rough rice as it is impossible to match in any appreciable quantity a sample of one lot of clean rice with another lot of clean rice. Clean rice is sold on these samples and when an order is obtained for a given amount of clean rice of a certain sample, the plaintiff and other rice millers then find what different lots of clean rice they have on hand which by mixing will produce the samples upon which the sale has been made. As a result, when a sale of clean rice is made, the order is filled by a mixture of clean rice which is made up from many different lots of clean rice. These different lots of clean rice have been milled from different lots of rough rice for which different prices have been paid. As a result the rice that goes into a clean

rice sale has come from many different sources and has been milled under many different conditions and it is impossible to tell exactly the cost of such clean rice under the circumstances. In addition, part of the clean rice obtained from a lot of rough rice may be carried for many months and mixed on different sales with innumerable combinations of other lots of clean rice so that it is impossible to trace through the history of rice processed during any month to determine what price was obtained for it, whether it was sold at a profit or a loss, and what part, if any, of the processing tax has been passed on to the purchaser.

Furthermore, there is no way in which the cost of a lot of rough rice can be allocated between the various grades of rice and the various rice products produced from such lot except by speculation for the use of arbitraries.

In short, it is impossible to determine, statistically or otherwise, where the ultimate burden of the processing tax falls—how much of it is paid by the consumer, how much by the producer, or how much by the processor.

In view of the above facts, the purported remedy given by Section 21(d) of said Agricultural Adjustment Act is wholly inadequate and is in fact a statutory denial of any legal remedy at all.

13.

In addition, the conditions imposed upon the right of the plaintiff to recover taxes paid by it must, under Section 21(d) be established to the satisfaction of the Commissioner of Internal Revenue, and no provision is made for judicial review. The transcript of the hearing before the Commissioner of Internal

Revenue is the sole record of the case on appeal to the Courts. The effect of such section is therefore to limit the function of the judicial review to the determination of whether there was any evidence submitted to the Commissioner of Internal Revenue tending to support the findings of the Commission. Said Section 21(d) therefore deprives the plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution.

14.

Under said Section 21(d) of said Agricultural Adjustment Act, if the processing tax has been either passed on or passed back by the plaintiff, then the plaintiff cannot maintain any action to recover the tax, if it is ultimately determined to be invalid, either for its own account or for the account of the persons to whom the processing tax has been thus passed on or passed back by the plaintiff; nor can the persons to whom the processing tax has been thus passed on or passed back maintain such an action on their own account, but all right of action by anyone to recover the tax, if it has been passed on or passed back, has been wholly taken away by said amendments to said Agricultural Adjustment Act. Moreover, Section 21(a) of said Act and Section 405 of the Revenue Act of 1935 deprive the Courts of power to render declaratory judgments with respect to such alleged taxes. By reason of the impossibilities of proof hereinabove referred to, the practical effect of said Act will be to deny taxpayers and the plaintiff all means of securing a judicial decision as to the constitutionality of the processing taxes, unless the Court grants the relief herein sought.

15.

Plaintiff further shows that by Section 30 of said Amendment of August 24, 1935, Section 21(a) was

added to said Act, which in substance provides that no suit to enjoin the collection of any tax imposed by said Act shall be maintained. Plaintiff alleges that said section is not intended to apply, and does not apply, to the injunction prayed for by this plaintiff inasmuch as plaintiff has no adequate remedy at law. Plaintiff alleges, however, that if said section should be interpreted as providing that no injunction should be granted to the plaintiff as prayed for in this cause, then the said section, together with the other provisions of said Act, is invalid and in violation of the Fifth Amendment to the Constitution of the United States, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes will be collected from the plaintiff and the plaintiff will have no remedy to prevent the collection of said unlawful taxes, and will be forever deprived of the right in any manner to test the constitutionality of such taxes.

16.

Said Section 21(d) further denies to the plaintiff a complete and adequate remedy at law, because a multiplicity of claims and suits would be required to enforce such rights as are granted thereunder and because said subsection requires that the facts required to be proved thereunder be established to the satisfaction of the Commissioner of Internal Revenue and makes no provision for a judicial review of his decision.

17.

A refund of processing taxes paid by the plaintiff could not actually be obtained even if it were possible for the plaintiff to prove the negative facts required by subsection (d) of Article 21, because Congress has

not appropriated funds for the payment of such refunds and plaintiff believes, that in view of the aggregate amount involved, there is a reasonable doubt whether such appropriation would ever be made.

18.

Plaintiff is ready, able and willing and hereby offers and agrees that in the event the injunctive relief herein prayed for is granted, it will deposit at such time and in such manner as this Court shall direct the said sums claimed to be due from plaintiff for processing taxes on account of the rice processed by plaintiff during the month of September, 1935, and the plaintiff further offers and agrees that at the end of each month hereafter it will file processing tax returns with the defendant as required by existing laws and regulations and that as and when processing taxes under said returns become due and payable according to existing laws and regulations or any extension lawfully granted to the plaintiff, it will deposit the amount of such taxes in such manner as the Court may direct, all such deposits to abide the final decree in this cause.

Wherefore, plaintiff being without an adequate remedy at law prays:

1. That process issue and be served upon the defendant requiring him to appear and answer this bill, but not under oath, and answer under oath being hereby expressly waived;

2. That pending the hearing of the application for a preliminary injunction hereinafter prayed for, a temporary restraining order issue immediately enjoining and restraining the defendant until the hearing of its application for a preliminary injunction or until

the further order of this Court, from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

3. That notice issue to the defendant advising him that plaintiff is hereby applying for a preliminary injunction and that plaintiff's said application will be heard at a time to be fixed by the Court in said notice, and that upon said hearing a preliminary injunction pending the final disposition of this case be issued enjoining and restraining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

4. That at the final hearing of this cause said preliminary injunction shall not have been granted, then that a permanent injunction be granted permanently restraining and enjoining the defendant from assessing or collecting or attempting to assess or collect from the plaintiff in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in Court or otherwise, any processing taxes under and pursuant to said Agricultural Adjustment Act and any

interest or penalty on account of plaintiff's failure to pay said processing tax, and from imposing or giving notice of intention to impose any lien for said taxes upon the property, real or personal, of the plaintiff;

5. That at the final hearing it be adjudicated that the provisions of said Agricultural Adjustment Act providing for the levying, assessing and collecting of said processing taxes against and from the plaintiff are invalid, unlawful and unconstitutional on each and every one of the grounds upon which they are hereinabove alleged to be unlawful, invalid and unconstitutional; and that the defendant has no lawful right to attempt in any manner to collect said processing taxes from the plaintiff or any of the penalties or interest thereon purported to be provided for in said Agricultural Adjustment Act;

6. And plaintiff prays for such other and further relief, both general and special, to which it may be justly entitled.

(Signed) FELIX J. JUMONVILLE,
(Signed) JOHN P. BULLINGTON,
HOMER L. BRUCE,
(Signed) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff.

State of Louisiana,
Parish of East Baton Rouge.

Before me, the undersigned authority on this day personally appeared Felix J. Jumonville, who having been by me first duly sworn, stated on oath that he is the President of Baton Rouge Rice Mill, Inc., a corporation plaintiff in the above cause, and that he has been duly authorized by said corporation to make this

affidavit for and in its behalf; that he has read the foregoing and above bill and knows the contents thereof and that the facts therein set out are true, except as to such facts as are therein stated on information and belief, and that as to those facts so stated to be on information and belief, he believes them to be true.

(Signed) FELIX J. JUMONVILLE.

Subscribed and sworn to before me this 25th day of October, 1935.

(Signed) HANNIS T. BOURGEOIS,
Notary Public in and for
East Baton Rouge Parish,
Louisiana.

(Seal)

EXHIBIT "A."

Filed October 25, 1935.

Issued April 18, 1935.

United States Department of Agriculture,
Agricultural Adjustment Administration.

Administrative Rulings Relating to the 1935 Southern Rice Production Adjustment Program.

Explanation.

These Administrative Rulings apply to and are part of the Southern Rice Production Adjustment Contract and documents pertaining thereto.

If any of the provisions are not understood, the Community or County Committee should be consulted. No producer should make out and submit to his Community or County Committee an Application or a Contract or other documents pertaining thereto with-

out knowing exactly what he must do in order to receive the benefits of the program.

I. Definitions.—As used in the Southern Rice Production Adjustment Application, Declaration, Contract, Schedule, and these Administrative Rulings:

(a) "Person," "tenant," "landlord," "producer," and "well or canal operator," include individuals, copartnerships, and corporations; and where it is required by the context, the singular shall include the plural.

(b) "Farm" means one contiguous tract of land operated as one unit substantially separate from any other such tract of land.

(c) "Producer" includes persons owning and operating their own farms; tenants operating farms rented for cash; tenants operating farms under a crop-share lease, contract, or agreement; landlords leasing to share tenants; corporations, copartnerships, or individuals furnishing water for production of rice on a share basis; and such other persons or classes of persons as the Secretary may determine to be eligible to sign Southern Rice Production Adjustment Contracts.

(d) "Participation in the production of rice" means sharing as a producer in any manner in the production of rice on a farm.

(e) "Farming Operation" means the production of rice or the participation in the production of rice by a producer.

(f) "Application" means any Application for Rice Acreage Allotment (forms Rice 1 and 2) heretofore or hereafter executed by any producer. "Application

serial number" means the serial number of any such Application.

(g) "Declaration" means any 1935 Southern Rice Declaration of Farm Acreage (form Rice 30) heretofore or hereafter executed by any producer. The "farm serial number" means the serial number of any such Declaration.

(h) "Schedule" means any Producer's Schedule of Rice Acreage (Form Rice-37) heretofore or hereafter executed by any producer. Each such Schedule shall bear the same serial number as the Contract executed by the producer who executes the Schedule.

(i) "Contract" means any 1935 Southern Rice Production Adjustment Contract (Form Rice-36) heretofore or hereafter executed by any producer. The "Contract serial number" means the serial number of any such Contract.

(j) "1935" means the period from January 1, 1935, to December 31, 1935.

(k) "1934" means the period from January 1, 1934 to December 31, 1934.

(l) The term "State base period" means the period of calendar years 1929 to 1933, inclusive.

(m) The "State Allotment" shall be 135,000 acres for Arkansas, 364,500 acres for Louisiana, and 142,500 acres for Texas. The "State Quota" shall be 1,834,-722 barrels for Arkansas, 3,898,333 barrels for Louisiana, and 2,010,833 barrels for Texas.

(n) The term "base period" in Arkansas and Louisiana means the period of the calendar years

1929 to 1933, inclusive, and in Texas the years 1931 to 1933, inclusive.

(o) The "production history" of a producer means, as the context may require, the producer's rice acreage or rice production, or both, for the base period as adjusted to the official figures and accepted by the State Committee.

(p) The "producer's Allotment" and the "producer's Quota" means respectively the rice acreage and the rice production assigned by the State Committee, acting for and on behalf of the Secretary, to the producer for 1935 and determined according to the procedure set forth in Administrative Ruling II hereof.

(q) The "acreage allocated" by the producer means that part of a producer's allotment which, in a Declaration, he allocates to a given farm as a basis for determining his share of the total rice acreage planted on that farm in 1935.

(r) "Producer's share of the rice acreage planted" and the "Producer's share of the acreage planted to rice in 1935" each means with respect to any farm, that acreage which bears the same ratio to the total rice acreage planted on that farm in 1935 (as determined upon checking compliance with the Contract in the manner prescribed by the Secretary) that the acreage allocated by the producer to that farm in a Declaration bears to the total rice acreage allocated to that farm in such Declaration.

(s) The "Secretary" means the Secretary of Agriculture of the United States.

(t) "Rice Section" means the Rice Section of the Agricultural Adjustment Administration.

(u) "Official figures" means the records of acreage and production prepared by the United States Department of Agriculture.

(v) A "barrel" means 162 pounds of rough rice.

(w) A "bushel" means 45 pounds of rough rice.

II. Determination of Allotments and Quotas.—1. The allotment of a producer shall be determined by each State Committee as follows: (a) Add the acreage of rice planted annually by each producer for his own account during the base period, after adjustment of acreage of all producers to the official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 per cent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total allotments assigned to producers in each state shall not in any event exceed the state allotment for that state.

2 The quota of a producer shall be determined by each State Committee as follows: (a) Add the number of barrels of rough rice produced annually by each producer for his own account during the base period, after adjustment of the production of all producers to official figures for each state for each of the years of the base period; (b) Divide the total thus secured by five (5) in Louisiana and in Arkansas, and the total thus secured by three (3) in Texas; (c) Reduce the result obtained by 20 percent in Louisiana and in Arkansas and the result obtained by 22 percent in Texas.

The total quotas assigned to producers in each state shall not in any event exceed the state quota for that state.

3. If the total of allotments and quotas determined according to the provisions of sections 1 and 2 of this numbered ruling, in any state, is less than the State Allotment and State Quota such excess may be allocated to producers by the State Committee, subject to approval by the Secretary or his authorized agent.

4. The Allotment and Quota are based upon the personal production history of the producer, regardless of where the rice was produced and are the measure of such history. The producer's production history shall not be transferred except as the State Committee shall, in writing, approve transfers made pursuant to the provisions of subsections a, b, and c of this numbered paragraph 4 of Administrative Ruling II. All requests for transfer of production history shall be in writing, signed by, or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee. In no event shall the State Committee approve the transfer of production history by reason of foreclosure, execution or any forced sale.

(a) If a producer has died or has been declared legally incompetent by a Court of competent jurisdiction and has not executed, prior to the date of such death or incompetency, an Application for an allotment and quota, his records of production may be used by such heirs or devisees, or such member of the family of such deceased producer or by such members of the family of such incompetent producer as are continuing the farming operation of the deceased or incompetent producer, upon their furnishing proof of such relation-

ship and succession to the producer's farming operation.

(b) If a well or canal operator voluntarily sells his well or canal system and has not executed an application, his production history shall be transferred to such successor, provided that the former well or canal operator was not engaged in farming operations in 1934.

(c) If a partnership is dissolved before an application for an allotment and quota has been executed by or on behalf of the partnership, its records of rice production for the base period shall be divided among the partners in such proportions as is agreed upon by the partners or their authorized representatives in writing submitted to the State Committee.

5. In all figures representing final determination of individual allotments and quotas, fractions amounting to one-half a unit or less shall be dropped and fractions amounting to more than one-half a unit shall be considered a whole unit.

6. If a producer during the base period had operated in more than one state, he shall apply for an allotment and quota to the State Committee of each state in which he had farmed during the base period. Only the history earned by the producer in that state shall be presented to the State Committee in his Application. No producer shall be assigned Allotments and Quotas in two or more states, larger in the aggregate, than the Allotments and Quotas assignable to him in one state, had all of his farming operations been confined to that one state.

7. The sum of all Allotments and of all Quotas within a State shall not in any event exceed the State Allotment and Quota, respectively.

III. Transfer of Allotment and Quota.—The producer's Allotment and Quota shall not be transferred except as the State Committee shall in writing approve transfers made pursuant to the provisions of subsections a, b, c, and d of this Ruling III. In no event shall the State Committee approve the transfer of an Allotment or Quota by reason of foreclosure, execution, or any forced sale. All requests for transfer shall be made in writing signed by or on behalf of the producer by his duly authorized agent, and approval thereof shall be in writing signed by at least two members of the State Committee.

(a) If a producer dies or has been declared incompetent by a Court of competent jurisdiction after executing an Application but before executing a Contract, his allotment and quota may be transferred to such heirs, devisees, or such members of the family of such deceased producer or such members of the family of such incompetent producer as are continuing the farming operations of the deceased or incompetent producer, upon their furnishing proof of such relationship and succession to the producer's farming operation.

(b) If a producer voluntarily withdraws, either wholly or in part, from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such persons as are continuing his farming operation, upon proof of such withdrawal and succession.

(c) If a producer has become disabled and has retired from the production of rice after executing an Application but before executing a Contract, he may transfer all or part of his Allotment and Quota to such

53

person as is continuing his farming operations upon proof of such disability, retirement, and succession.

(d) Upon dissolution of a partnership, after an Application has been executed by or on behalf of the partnership, but before a Contract has been executed by or on behalf of the partnership, the Allotment and Quota shall be divided among the partners in such proportions as is agreed upon by the partners or their duly authorized representatives in writing submitted to the State Committee.

IV. Use of Allotment and Quotas by Well or Canal Operators.—If a well or canal operator has an allotment and quota assigned to him by the State Committee on the basis of his personal history as a furnisher of water on a crop share basis, such well or canal operator shall not change his status so as to use such allotment and quota in a capacity other than as a furnisher of water on a share crop basis.

V. Signing of Application, Declaration, Contracts, and Other Documents by a Person in a Representative Capacity.—

(1) In the event any document is to be executed on behalf of a Corporation, it shall be signed on behalf of the Corporation by an officer of the Corporation, who shall state his title, and affix the corporate seal to the Contract, (If the Corporation has no corporate seal, the following statement in writing shall appear over the signature, "No corporate seal required or adopted,") or by a representative of the corporation other than an officer, who has been authorized by the corporation to execute the contract by power of attorney, under seal, duly executed on behalf of the corporation on a prescribed form and filed with the Comptroller of the Agricultural Adjustment Administration at Washington, D. C., or

attached to the contract, which authorization shall be considered a part of the contract documents.

(2) In the event a document is to be signed by an executor, administrator, guardian of an incompetent person, receiver, or other person appointed by a Court in a fiduciary capacity, there shall be furnished either the original or a certified copy of the Court order of appointment or a certificate on a prescribed form showing that such person was duly appointed as such fiduciary and that the appointment is still in full force and effect.

(3) Where a document is signed by a manager or an agent for a producer, the original or a certified copy of a Power of Attorney, on a prescribed form, authorizing the manager or agent so to sign shall be furnished.

(4) If the producer is a Governmental body or agency, there shall be attached to the document a certified copy of a resolution of the Board or other authority authorized by statute to lease and contract in regard to the land and personal property covered by the contract, authorizing the execution of such document by the person executing the document on its behalf.

(5) When one producer has several documents to be signed by the same agent or attorney, a properly executed power of attorney may be filed with the Comptroller of the Agricultural Adjustment Administration to cover all such cases, and shall be considered as a part of each document so signed.

(6) A document to be signed for a partnership shall be executed in the name of the partnership and of each partner as an individual, by each member of

the partnership, or on behalf of each partner who does not personally sign, by an agent duly authorized to so sign by a Power of Attorney, on a prescribed form.

VI. Pledge of Adjustment Payments.—Adjustment payments may not be assigned under any condition. This is forbidden by the Contract, as well as prohibited by law.

However, the producer's right to adjustment payments under the Contract may be pledged in order to obtain funds (or credit) for carrying on the current operation of the farm. The expression "funds" (or credit) for carrying on the current operation of the farm and "current production credit" means funds or credit to meet any necessary expense of preparing of land, planting, cultivating, watering, harvesting, and marketing of the rice crop grown in the year 1935. Without in any way limiting the exclusiveness of the above definition, the expression shall not include cash rent or debts incurred in connection with the production of past crops.

No pledge of any producer's right to adjustment payments under his contract for any purpose other than to procure current production credit as defined above shall give rise to any obligation under the Contract upon any payee designated therein by the producer to distribute such payment, when and if accepted by such payee, to the person claiming to hold such a pledge not given for current production credit.

Dated April 18, 1935.

R. G. TUGWELL,
Acting Secretary of Agriculture.

# EXHIBIT "B".

Filed Oct. 25, 1935.

Form Rice 36,
U. S. Department of Agriculture,
Agricultural Adjustment Administration,
Rice Section.
Form approved by Comptroller General, U. S.,
May 1, 1935.

1935 Southern Rice Production Adjustment Contract.

(Pursuant to and to effectuate the purposes of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter referred to as the Act.)

I. Performance by Producer:

1. The undersigned producer (and each and all of them if more than one signs this instrument) hereby offer(s) to enter into a contract with the Secretary of Agriculture (hereinafter referred to as the "Secretary") upon the terms and conditions hereinafter set forth and subject to such regulations or administrative rulings (which shall be part of the terms and conditions of this contract) as have been heretofore or may hereafter be prescribed by the Secretary relating to 1935 Southern Rice Production Adjustment Contracts. This contract shall apply to every farm upon which the producer participates in any manner in the production of rice in 1935 (hereinafter referred to as "the farm(s) covered by this contract"). This offer shall become a binding contract upon its acceptance by the Secretary.

2. The producer,

(a) Represents that he has allocated to each farm upon which he will participate in any manner in the production of rice in 1935 some part of his allotment and that the total acreage allocated by the producer to all such farms does not exceed his allotment;

(b) Agrees that he will not share or participate in any manner in the production of rice in 1935 on any farm to which he has not allocated a portion of his allotment;

(c) Agrees that for the purposes of checking compliance and making payments under this contract "the producer's share of the acreage planted to rice in 1935" on each farm covered by this contract shall be that acreage actually planted to rice on such farm in 1935 which bears the same ratio to the total acreage planted to rice on such farm in 1935 that the acreage allocated by the producer to such farm bears to the total acreage allocated thereto by all persons participating in the production of rice thereon;

(d) Agrees that his total share of the acreage planted to rice in 1935 on all the farms covered by this contract shall not exceed his allotment;

(e) Agrees that the acreage permitted under this contract to be planted to rice in 1935 shall be farmed in a workmanlike manner throughout 1935;

(f) Applies for membership in the Rice Production Control Association organized pursuant to Form Rice 35 in each County or Parish in which a farm covered by this contract is located;

(g) Agrees to permit access by any authorized agent of the Secretary to the farm(s) covered by this contract, and to all fiscal books, records, and documents, regardless of where located, pertaining to the

production and/or sale of rice on or from any and all of such farms, and expressly waives any right to have such records kept confidential;

(h) Agrees not to sell, pledge, transfer, or assign, in whole or in part, this contract or his right to or claim for payments under this contract, and not to execute any power of attorney to collect such payments, and any sale, pledge or assignment, order or power of attorney shall be null and void, except that the producer may pledge or hypothecate his right to any adjustment payments under this contract for the purpose of obtaining funds (or credit) for carrying on the current operation of the farm(s) covered by this contract (hereinafter referred to as "current production credit") and such pledge or hypothecation shall operate to establish an interest or right on the part of the pledgee in and to said adjustment payments as against any other person or persons, but the pledge or hypothecation thereof shall not alter the provisions of paragraph 5 that all adjustment payment checks drawn in compliance with this contract shall be made payable to the payee therein stipulated. If the adjustment payments herein provided for shall have been pledged by the producer for current production credit, the producer, or if a payee is designated in paragraph 5 hereof and accepts such payment, then such payee if notified in writing of the pledge, shall receive the adjustment payment in trust to pay therefrom to the pledgee the amount of the obligation owing for current production credit secured by such pledge and to pay the balance of said payment to the producer. If a payee other than the producer is named in paragraph 5 hereof, and if such payee shall not have been notified of any pledge of the adjustment payments for current production credit made pursuant to the terms of this numbered paragraph, such payee shall receive such payments in trust to pay the whole amount

thereof to the producer, it being expressly understood and agreed that the Secretary shall have no duty or obligation to see that distribution is made in accordance with the foregoing provisions, but shall have the right to enforce the performance of said trust by the payee;

(i) Represents that the statements contained herein are true to the best of his information and belief. Without limitation of any other right or remedy of the Secretary conferred by law or this contract, a material misstatement herein or in any information furnished by the producer in connection with this contract or any noncompliance by the producer with any of the terms hereof, or with any applicable regulation or administrative ruling which has been or may hereafter be prescribed by the Secretary with reference to 1935 Southern Rice Production Adjustment Contracts shall be grounds for termination of this contract by the Secretary. The determination of the Secretary that any such misstatement or noncompliance has occurred shall be final and conclusive. In the event of termination of this contract by the Secretary, the producer shall return to the Secretary all payments theretofore made under this contract, together with all costs incident to the collection thereof.

II. Performance by Secretary:

3. Amount of Payments.—The Secretary shall, as a consideration for the performance by the producer of all the terms and conditions of this contract, and in the manner and at the times specified in paragraph 4 hereof, make

(1) A first adjustment payment at a rate of 81 cents per barrel of rice, and

(2) A second adjustment payment at a rate per barrel of rice, uniformly applicable to all such contracts, to be determined by the Secretary,

upon an amount of rice determined in the manner specified in sub-paragraph (a) or (b) of this numbered paragraph, whichever shall apply:

(a) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is not more than 100 per cent nor less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which equals 85 per cent of the producer's quota.

(b) If the producer's total share of the acreage planted to rice in 1935 on all the farm(s) covered by this contract is less than 85 per cent of the producer's allotment, such payments shall be made upon that number of barrels of rice which bears the same ratio to the producer's quota that the producer's total share of the acreage planted to rice in 1935 on all such farms bears to the producer's allotment.

4. Time of Payments.

(a) The first adjustment payment shall be made as soon as practicable after August 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

(b) The second adjustment payment shall be made as soon as practicable after December 1, 1935, provided that proof satisfactory to the Secretary, of compliance with the terms and conditions of this contract, has been submitted to the Secretary or his authorized agent.

5. (a) All adjustment payments hereunder are for the benefit of the producer and shall be made only to the producer unless the producer shall, by naming another person in this numbered paragraph, direct that such payments be made to the person so named, in which event the payments shall be made by check drawn payable to the person so named who shall receive them subject to the provisions of this contract, and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof. If the person so named shall have died or shall refuse to accept such payment, or shall for any reason be unable to receive and distribute such payment subject to the provisions of this contract then such payment shall be made to the producer, who likewise shall receive such payments subject to the provisions of this contract and particularly subject to the provisions of subparagraph (h) of paragraph 2 hereof.

(Stamp State and County code above.)

State..... Parish } .....
County }
Community..... Contract }
Serial No. } .....

5. (b) Designated payee .....
of.....
(Address of payee)

III. Signature(s) of Producer(s).

6. In Witness Whereof, each of the undersigned has hereunto set his hand on the date indicated opposite his signature.

..... ....., 1935.
(Witness) (Date of Producer's signature)

.....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

..... ....., 1935.
(Witness) (Date of Producer's signature)

..... .....
(Signature of Producer) (Application No.)

Address of Producer (Rural Route No.) .... (Box No.) .... (Post Office) ..... (State) .....

IV. Certification of Committees.

We Hereby Certify that we have examined the foregoing offer and that, to the best of our information and belief, the total acreage allocated by the producer to all the farm(s) covered by this contract does not exceed the producer's allotment, and hereby recommend that the foregoing offer be accepted by the Secretary.

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

.....
(For Community Committee)

.....
(For County Committee)

.....
(For State Committee)

Date....., 1935. Date....., 1935. Date....., 1935.

V. Acceptance by Secretary.

In consideration of and in reliance upon the agreements of the producer herein set forth and the repre-

sentations made by the producer in and in connection with this contract, this offer is hereby accepted, this .....day of ....., 1935.

HENRY A. WALLACE,
Secretary of Agriculture, for and on behalf of the United States,

By .....,
Representative of Secretary of Agriculture.

VI. State Committee's Certificate of Compliance.

The undersigned State committeemen certify that the producer's total share of the acreage planted to rice in 1935 on all farm(s) covered by this Contract does not exceed the producer's allotment, and further certify that the producer's allotment and quota and the producer's total share of the acreage planted to rice in 1935 on all farms upon which the producer is participating in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, of part VIII below, and further certify that to the best of their information and belief the producer has fully complied with all terms of this Contract and all regulations and administrative rulings issued by the Secretary applicable up to and including the date of this certificate.

Date ....., 1935.

.....
(For State Committee)

.....
(For State Committee)

VII. Producer's Certificate of Compliance.

The producer certifies that his total share of the acreage planted to rice in 1935 on all farms upon which he is participating in any manner in the production of

rice does not exceed his allotment, that his allotment and quota, and his total share of the acreage planted to rice in 1935 on all farms on which he is participating in any manner in the production of rice in 1935 are correctly stated in items 1, 2, and 3, respectively, in part VIII of this contract, and further certifies that he is not sharing in the production of rice on any farms covered by this Contract are being farmed in a workmanlike manner, and that he has fully complied with all other terms of this Contract, and with all regulations and administrative rulings issued by the Secretary, applicable up to and including the date of this certification.

..... (Witness)
Date....., 1935.

....,
(Producer.)

VIII. Certified Basis for Determining Payments.

1. Producer's allotment .....(acres) .....
2. Producer's quota .....(bbl.) .....
3. Producer's share of acreage measured .....
4. Quota percentage (item 3 ÷ item 1).... .....%*
5. Number of barrels for payment (item 4 times item 2) ..... .....

*If the above percentage is not more than 100 nor less than 85 per cent, then 85 per cent shall be used.

Do not write in this blank; for use by Comptroller's Office.

Computation of payments:

1935 first adjustment payment Item 5 times 81¢ per bbl. ..... .....$.....

1935 second adjustment payment, Item 5 times ....¢ per bbl.....$.....

Total .....$.....

Do Not Write in Space Below.

Certificate of Comptroller.

Audited and approved for 1935 first adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

Certificate of Comptroller.

Audited and approved for 1935 second adjustment payment in the amount of ..... $.....

JOHN B. PAYNE,
Comptroller,

By .....,
Auditor.

Schedule No. .....

Date.....

Paid ..... by check on Treasurer of the United States in favor of payee or payees named thereon.

Check No..... $.....

(Any intentional misrepresentation of fact made in this contract for the purpose of defrauding the United States will be subject to the criminal provisions of the United States Code.)

## EXHIBIT "C".

Filed October 25, 1935.

Sec. 21. (a) No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any Court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the Court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment,

are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

(c) The making of rental and benefit payments under this title, prior to the date of the adoption of this amendment, as determined, prescribed, proclaimed and made effective by the proclamations of the Secretary of Agriculture or of the President or by regulations of the Secretary, and the initiation, if formally approved by the Secretary of Agriculture prior to such date of adjustment programs under section 8 (1) of this title, and the making of agreements with producers prior to such date, and the adoption of other voluntary methods prior to such date, by the Secretary of Agriculture under this title, and rental and benefit payments made pursuant thereto, are hereby legalized and ratified, and the making of all such agreements and payments, the initiation of such programs, and the adoption of all such methods prior to such date are hereby legalized, ratified, and confirmed as fully to all intents and purposes as if each such agreement, program, method, and payment had been specifically authorized and made effective and the rate and amount thereof fixed specifically by prior Act of Congress.

(d) (1) No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall be refunded or credited to any person (not

a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of section 16, had the tax terminated by proclamation pursuant to the provisions of section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the Court. Notwithstanding any other provision of law: (1) no suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any Court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2)

no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such Courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such Courts based upon the amount in controversy.

(e) In connection with the establishment, by any claimant, of the facts required to be established in subsection (d) of this section, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda, relative to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any collector designated by him, to summon witnesses on behalf of the United States or of any claimant to appear before the Commissioner, or before any person designated by him, at a time and place named in the

summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any matter affecting the findings to be made by the Commissioner pursuant to subsection (d) of this section. The provisions of Revised Statutes 3174 and of Revised Statutes 3175 shall be applicable with respect to any summons issued pursuant to the provisions of this subsection. Any witness summoned under this subsection shall be paid, by the party on whose behalf such witness was summoned, the same fees and mileage as are paid witnesses in the Courts of the United States. All information obtained by the Commissioner pursuant to this subsection shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

(f) No refund, credit, or abatement shall be made or allowed of the amount of any tax, under section 15, or section 17, unless, within one year after the right to such refund, credit, or abatement has accrued, a claim for such refund, credit, or abatement (conforming to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled to such refund, credit, or abatement, except that if the right to any such refund, credit, or abatement accrued prior to the date of the adoption of this amendment, then such one year period shall be computed from the date of this amendment. No interest shall be allowed or paid, or included in any judgment, with respect to any such claim for refund or credit.

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930.

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## RETURN TO RULE TO SHOW CAUSE WHY TEMPORARY INJUNCTION SHOULD NOT ISSUE.

Filed Oct 28th, 1935.

(Title Omitted.)

To the Honorable the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Now into Court comes Rufus W. Fontenot, Acting Collector of Internal Revenue, Defendant in the above entitled and numbered cause, through Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, and by virtue of the rules and practice of this Court requiring the defendant in rule to file all defenses to the rule on the date set for the hearing on the application for a temporary injunction, and with full reservation of all of his rights under the pleadings in this cause,

answers the rule by stating that for lack of sufficient information to justify a belief he denies all of the allegations of paragraph two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of the Bill of Complaint, and also denies the allegations of paragraph one with the exception of the statement relative to the defendant, which statement is admitted.

Your Respondent further avers that the proceedings should be dismissed for the reasons that this Honorable Court has no jurisdiction and that the Agricultural Adjustment Act is constitutional, valid and enforceable.

Wherefore, your Respondent prays this Honorable Court to dismiss the Bill of Complaint at Complainant's costs and to refuse granting any injunction in these proceedings, and for all general and equitable relief.

(Signed) RENE A. VIOSCA,
United States Attorney.
(Signed) ROBERT WEINSTEIN,
Asst. United States Attorney.

(Verification.)

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came Rene A. Viosca, who is the United States Attorney for the Eastern District of Louisiana, who in his oath says: That in his aforesaid official capacity he is of counsel for defendant in the above case; that he has drawn the return to the rule to show cause and that all the allegations of fact therein are true and correct to the best of his knowledge, information and belief.

(Signed) RENE A. VIOSCA.

Sworn to and subscribed before me this 28th day of October, 1935.

(Signed) CLAUDE D. SHAW,
Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

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## MOTION TO DISMISS.

Filed Oct. 28, 1935.

(Title Omitted.)

To the Honorable, the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Comes now Rufus W. Fontenot, Acting Collector of Internal Revenue, defendant in the above entitled and numbered cause, by Rene A. Viosca, United States Attorney in and for the Eastern District of Louisiana, and Robert Weinstein, Assistant United States Attorney for said District, his attorneys, with full reservation of his rights to further plead in this cause, and moves the Court to dismiss the Bill of Complaint filed herein, with costs to be paid by the Complainant upon the following grounds and for the following reasons:

### I.

That this Court is without jurisdiction to restrain or enjoin the collection of taxes herein involved, or to hear and/or determine the issues presented by said bill of complaint because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of Federal Tax.

2. Section 21-A of the Agricultural Adjustment Act, as amended, prohibits the maintaining in any Court of a suit for the purpose of restraining the assessment and/or collection of any processing tax under the said Agricultural Adjustment Act.

3. The bill of complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a Court of Equity.

4. Complainant has a plain, adequate and complete remedy in the ordinary course of law.

II.

That the United States of America is the real party in interest, which may not be sued without its consent.

III.

That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgment Act.

IV.

That the Declaratory Judgment Act was not intended by the Congress to be used for the litigation of questions arising under the Revenue Laws, and particularly was not intended as a means for obtaining injunctive relief.

V.

This proceeding is prohibited by the provisions of the Declaratory Judgment Act, as amended, and cannot be maintained. (Revenue Act of 1935, approved August 31, 1935, Section 405).

Dated: this 28th day of October, 1935.
(Sgd.) RENE A. VIOSCA,
United States Attorney.
(Sgd.) ROBERT WEINSTEIN,
Assistant United States Attorney.

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## ORDER OF COURT CONSOLIDATING ALL CASES FOR TRIAL, ETC.

Filed Oct. 28, 1935.

United States District Court, Eastern District of Louisiana, New Orleans Division.

Docket No. 321—In Equity:

Rickert Rice Mills, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 322—In Equity:

A. B. Dore, doing business under the name of The Dore Rice Mill,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 323—In Equity:

United Rice Milling Products Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 324—In Equity:

Baton Rouge Rice Mill, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 325—In Equity:

T. Simon
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 326—In Equity.

Levy Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 327—In Equity:

Farmers Rice Milling Company, Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Docket No. 328—In Equity:

Noble-Trotter Rice Milling Co., Inc.,
versus
Rufus W. Fontenot, Individually and as Acting Collector of Internal Revenue.

Considering the stipulation and agreement of counsel for all parties made this day in open Court;

It is Ordered that the above numbered and entitled cases be and they are hereby consolidated for the

purpose of trial and that the affidavits and evidence offered in one case be considered to apply to all.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

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State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, on this day personally appeared W. M. Reid, known to me, who being by me first duly sworn in terms of law deposed and said on his oath as follows:

My name is W. M. Reid. I reside in New Orleans, Louisiana, and am Executive Secretary of the Rice Millers' Association. My principal duties are the preparation and interpretation of statistical and economic data with regard to the rice milling industry. I have been engaged in the rice milling business since 1909, and from 1916 to 1928, I personally operated a rice mill. I am thoroughly familiar with the rice milling industry in all of its phases.

I have read all of the allegations contained in Section 12 of Plaintiff's bill of complaint and Equity 321, Rickert Rice Milling Company vs. Rufus W. Fontenot, Equity 322, A. B. Dore vs. Rufus W. Fontenot, Equity 323, United Rice Milling Products Company, Inc., vs. Rufus W. Fontenot and companion cases, and all of such allegations are true and correct in every respect.

It is true that rice millers, when they purchase rough rice, consider the fact that they will have to pay a processing tax on the milling of such rough rice. However, this is simply one of the many factors entering into the miller's determination of what he ought to

pay for rough rice. As a practical matter, when the rice miller negotiates for the purchase of a given lot of rice, he first estimates what he believes he could get for such rice after milling on the existing market for clean rice and rice products. He then estimates what he thinks it will cost him to process the rough rice into its various grades and products, and in this estimate is included the amount of the processing tax, as well as other taxes. Having made these estimates, he determines what he ought to pay for the rough rice. However this is not necessarily what he does pay, because each individual miller is buying in competition with other millers. Thus, if other millers are paying more than he thinks he ought to pay, he has to meet the price the others are paying, if he is to get any rice. No individual miller makes the rough rice market. It is a market made of the composite purchasing of all millers in the particular territory. While the estimates above referred to are made with regard to the market for clean rice and rice products at the time of the purchase of the rough rice, that market, however, does not necessarily control since rough rice is not ordinarily milled, and the clean rice and products sold until several months after the purchase of the rough rice.

Since the market for clean rice and rice products fluctuates from day to day and month to month, the prospects of the future market has a bearing on what the miller may have to pay for rough rice. Optimism with reference to the future market for clean rice on the part of a sufficient number of rice millers will force up the market for rough rice, and all millers will have to meet the increased price of rough rice (if they are to have any rice at all), even though some of them may be pessimistic as to the future market.

For example, the present market price of rough rice is quite high with reference to the present market price for clean rice and rice products. In other words, using the estimates above referred to, the cost

of rough rice on today's market plus estimated cost of milling (including the processing tax) is more than the miller could reasonably expect to procure for the rice and rice products made from such rough rice on the existing market for clean rice and rice products. This present day market for rough rice is not made by any individual miller, but is made by the composite of purchases by all millers in the territory. Thus, as I have previously said, while the processing tax is considered by the miller in determining what he ought to pay for rough rice, it is simply one of many factors entering into such determination, and is by no means controlling.

Furthermore, it is impossible to tell on any given purchase of rough rice how much, if at all, that price has been affected by the existence of the processing tax.

I am familiar with accounting and statistical methods, and I know of no possible method of keeping books and records in the rice business which would accurately reflect the gain or loss from the purchase, milling and sale of any given lot of rice as distinguished from the gain or loss from the aggregate of all transactions during a season. A profit or loss, however, may be estimated at any given time by the use of averages, predictions and arbitraries.

The rice milling business is seasonal; the season beginning on August 1st and ending on July 31st, the operations gradually increasing until the peak is reached during the months of October, November and December, and decreasing to the end of the season. For this reason as well as others, the cost of milling varies greatly from time to time during the season. The estimated cost of milling which millers use in budgeting and determining what they want to pay for rough rice is arrived at by averaging the cost of the entire season so that this factor, when used to estimate a profit or loss on a given transaction, could never be exact, and might be very

much too high or very much too low when applied to that particular transaction.

Under these circumstances, when a miller purchases a particular lot of rice, he may believe that all, or a part of the processing tax to be assessed on such rice will be absorbed by the farmer. On the other hand, he may believe that all, or a part of such tax will be absorbed by himself. However, he can never even know, much less prove, even after all the clean rice and rice products made from the particular lot of rough rice has been sold, whether he, or the farmer, or the purchaser, or all of them together has borne the ultimate economic burden of the tax. This is because any belief he may have had as to whether the burden of the tax would fall, must of necessity, have been based in part on estimates, which are in turn, based on averages, which are never accurate with respect to any given lot of rice. In addition, such belief must also be based in part on assumptions as to market conditions on clean rice and rice products, which may or may not be correct. The rough rice may go through the mill on a day when large amounts are being milled, and the cost per unit is lower than the average; or, it might go through on a day when little rice was being milled resulting in a unit cost higher than the average; or, it might go through partly on one kind of a day, and partly on another. Furthermore, the rice may not mill out what he expected, even if the market on clean rice and rice products remains the same. And, in addition, the price at which he eventually sells the clean rice and rice products may be substantially less or substantially more than the sale price on which he based his presumptions.

There is no necessary relation between the market for clean rice and for rice products, since they are sold for different purposes, and this is an added reason why the miller cannot possibly allocate the cost of a given lot of rough rice among the clean rice and rice products produced from it.

For example, it is entirely possible for the market on bran or hulls to be relatively high, while the market on the various grades of head rice is relatively low. The rough rice market is affected by the clean rice and rice products market and vice versa, but it is as impossible to determine their relative affect on each other as it is to determine whether the hen or the egg came first. I know of no way of determining what either the rough rice or clean rice marked would be if there were no processing tax. I do know, however, that the individual miller cannot force down the price paid to the farmer for rough rice because of the tax, and thus force the farmer to pay all, or a part of the burden of the tax. The individual miller simply pays the market price for rough rice which has been fixed by the composite action of all millers, and it would be impossible to prove whether a lowering of the rough rice market was the result of the assessment of the tax, or whether it was caused by other factors, such as a drop in time clean rice and rice products market, a composite pessimism on the part of rice millers as to the future market or other factors. The same thing is true with regard to the market for clean rice and rice products, and no individual miller can arbitrarily force that market upwards in order to pass on the tax.

(Sgd.) W. M. REID.

Sworn and subscribed to before me, the undersigned authority, this 28 day of October, 1935.

(Sgd.) HARRY R. CABRAL.

(Seal) Notary Public.

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State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared Homer L. Bruce, who, having been by me duly sworn, stated on oath as follows:

He lives in Houston, Harris County, Texas, and is duly licensed and practicing attorney at law. He is

familiar with the bills of complaint that are being presented to the United States District Court at New Orleans, Louisiana, on behalf of certain rice millers of Louisiana seeking an injunction against the collection of processing taxes on rice, having worked with his partner Mr. John P. Bullington in the preparation of said bills of complaint, and is familiar with the general practice of the rice industry of selling rice on samples and the filling of orders for clean rice by mixing rice from different lots of clean rice in the manner set out in the bills of complaint.

This affidavit is made in connection with the allegations in said bills that it is impossible for the plaintiff rice millers to comply with the requirements of Section 21 (d) of the Agricultural Adjustment Act that they shall establish that no part of the processing tax has been passed on to the consumer or taken out of the price paid the producer before they are allowed to recover any processing taxes paid.

Section 8 (3) of the Agricultural Adjustment Act gave the Secretary of Agriculture authority to issue licenses to processors, including processors of rice, and provided that the Secretary should have the right to revoke any license for violations of its terms. Section 8 (2) of the same Act authorized the Secretary to enter into marketing agreements with processors.

In the fall of 1933, the Secretary entered into a marketing agreement with members of the southern rice milling industry, and at the same time issued a license applicable to all mills. This marketing agreement and the license were in substantially the same form. Later various amendments were made to both the marketing agreement and the license.

In the marketing agreement and in the license, the Secretary of Agriculture fixed the price to be paid to farmers for rough rice, these prices being set out in Article III of the marketing agreement and license hereinafter referred to, namely, the one effective on July 21, 1934. Article IV, Section 1 of the license

effective July 21, 1934, set out the minimum price that millers might sell clean rice for in the domestic market and that section is as follows:

"Section 1. To effectuate the purposes of this Amended license and to aid in the carrying out and enforcement of the provisions hereof, no miller shall offer for sale, sell or deliver for domestic consumption any quantity of clean rice for an amount per pocket less than the sum of

(a) the minimum price, determined pursuant to article III and Schedule 1, for the grade, variety and quantity of the rough rice from which such clean rice was milled,

(b) the conversion charge for such quantity of rough rice and prevailing at the time of such offer, sale or delivery, and

(c) the published car lot rail rate for transporting such rough rice from the customary point of delivery to the miller's mill, and

(d) the administrative assessment for such quantity of rough rice and prevailing when such rice was milled;

Provided, however, that any miller may offer clean rice for sale for export to foreign countries, on the foregoing basis less a maximum discount of 20 cents per barrel of such rough rice and may, if the rice is actually exported, sell or deliver clean rice for export to foreign countries on said basis less said maximum discount. The determination of the Millers Committee as to whether or not clean rice is actually exported

shall be final and conclusive, subject to appeal to the Secretary. Said minimum amounts, below which this section provides that clean rice shall not be offered for sale, sold, or delivered by a miller, apply f. o. b. the miller's mill.

Sec. 2. The conversion charge per barrel of rough rice shall, until and except as changed by the Secretary, be an amount equal to the sum of (a) seventy (70) cents per barrel of rough rice, (b) nine (9) cents per barrel of rough rice if standard one-hundred pound single packages are used for the clean rice, and (c) if cotton or paper inner linings or regular burlap outer slips are used for the clean rice, an additional five (5) cents per barrel of rough rice, or (d) if any other type of container is used for the clean rice, the actual invoice price for the container used. The Secretary may at any time and from time to time during the effective period, increase or decrease the amount of, and/or change the basis of computation of, the conversion charge."

One of the main purposes, if not actually the main purpose, of the Agricultural Adjustment Act and this license was to increase the price of rough rice paid the farmer, and in order to keep the rough rice price at a higher level, the Secretary attempted by this Section 1 to fix the price that clean rice might be sold at as roughly 79¢ per barrel above the cost of the rough rice. It was extremely important to keep the clean rice up to this level in order to maintain the rough rice price. In the fall of 1934, the Secretary of Agriculture brought proceedings, according to the information and belief of the affiant, against a number of different rice mills in Louisiana and to affiant's knowledge against Bay City Rice Mills of Bay City, Texas, a partnership composed of W. M. Loving and three other partners. The case against the Bay City Mills was case No. 11-1-7, entitled In the Matter of W.

M. Loving, R. Q. Pegram, S. M. Clements and L. D. Clements, Individually and as Co-partners trading under the name Bay City Rice Mills. One of the original charges against the Bay City Rice Mills was Charge No. 11, which charged in general terms that the Mill had sold clean rice for domestic consumption for an amount less than the price fixed for the sale of the clean rice pursuant to this license. This Charge 11 was later made more specific as follows:

"11. That the said Licensee since the effective date of said License has violated Section 1 of Article V of said License as in effect until July 21, 1934, 12:01 A. M. Eastern Standard Time, and Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on, in that said Licensee has offered for sale, sold and delivered, for domestic consumption, quantities of clean rice, to-wit: Clean rice lot numbered 36 on the books of the respondent derived from rough rice lot numbered 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 43 on the books of the respondent derived from rough rice lot number 33 on the books of the respondent and purchased from C. E. Everitt; clean rice lot numbered 123 on the books of the respondent derived from rough rice lot numbered 153 on the books of the respondent and purchased from A. P. Powers clean rice lot numbered 124 on the books of the respondent derived from rough rice lot numbered 154 on the books of the respondent and purchased from J. R. Reed; for an amount per pocket less than the price fixed for the sale of such clean rice pursuant to said Section 1 of Article V of said License as in effect up until July 21, 1934, 12:01 A. M. Eastern Standard Time, and pursuant to said Section 1 of Article IV of said License as in effect from July 21, 1934, 12:01 A. M. Eastern Standard Time on."

The affiant, together with Mr. W. E. Davant of Bay City, Texas, represented the Bay City Rice Mills in this hearing before the representatives of the Secretary of Agriculture on these charges, which hearing was held in Houston, Texas, and again on December 27, 1934, and ran through January 2, 1935.

The Bay City Rice Mills in that proceeding took the position, and so advised the Secretary of Agriculture's representatives, that it was utterly impossible, owing to the manner in which the rice industry is conducted, through the sale of clean rice on samples made up of mixes of different lots of clean rice, as more fully set out in the bills of complaint presented to the United States District Court at New Orleans in the processing tax suits, to determine in the case of any lot of rice, whether the clean rice had been sold for 79¢ more than the rough rice had cost, or for the amount above the cost of the clean rice that the Secretary required under Section 1 of Article IV.

The Secretary of Agriculture's representatives had access to all the books, vouchers and records of the Bay City Rice Mills, both in connection with its rough rice purchases and its clean rice sales and had several auditors continuously working on those records. The amount paid for the rough rice purchased from Evoritt, Powers and Reed, as set forth in said Charge II was established. The clean rice derived from the rough rice purchased from these three producers was traced at the hearing into the sales of clean rice into which they entered and the price of clean rice sales was established. However, owing to the fact that each quantity of clean rice that went into a sale was made up of a mixture from various lots of clean rice, which were in turn produced from various lots of rough rice bought from different producers, and owing to the fact that there was, as is usual in the rice business, an almost infinite variation in the combinations of these mixes of clean rice lots, and owing to the fact that rough rice when milled

produces different grades of clean rice, as set forth in the above mentioned bills of complaint, the Secretary of Agriculture was never able to show in that case whether or not the Bay City Rice Mills had obtained for the clean rice derived from the Evoritt, Powers, and Reed rough rice the amount (roughly 79c) above the cost of the rough rice that Article IV, Section 1, attempted to require the mill to get. Although that was one of the charges most vitally affecting the entire rice program in affiant's belief, and although the Secretary of Agriculture through his two attorneys who prosecuted the case and through his several auditors who were continuously working on the records of the Bay City Mills made every effort to prove the charge, the Secretary of Agriculture in his findings did not find that the charge had been proven and did not find that the Bay City Rice Mills had violated the license in the manner set forth in Charge 11.

Affiant believes, and on that belief states, that the reason the Secretary of Agriculture did not find that Charge 11 had been supported by any evidence was because it was utterly impossible practically to show whether clean rice had been sold for the amount above the rough rice cost that the license required.

The charge referred specifically to the sale of clean rice lots 36, 43, 123 and 124. Evidence as to the history of those clean rice lots is as set out below.

The clean rice in each case was included in various sales, each sale being represented by a separate invoice. The history of those clean rice lots was as follows: (As shown by the record in that case.)

Clean Rice Lot 36:

This rice came from rough rice lot 33 from C. E. Everitt. It was mixed with various other lots of rice and went in as a part of the rice sold and represented

by the following 9 invoices: Invoice Nos. 6615, 6622, 6634, 6639, 6645, 6767, 6770, 6771 and T-162 (R. 324-326).

The rice covered by invoice No. 6615 was made up of rice from various lots as follows:

39 pockets from lot 17, fancy
125 pockets from lot 31, fancy
200 pockets from lot 36, fancy
26 pockets from lot 33, heads
26 pockets from lot 31, heads
(R. 472.)

Invoice 6622 consisted of the following:

75 pockets from lot 26, fancy
250 pockets from lot 35, fancy
175 pockets from lot 36, fancy
(R. 475.)

Invoice 6634 consisted of the following:

148 pockets from lot 34 EP
75 pockets from lot 35 EP
75 pockets from lot 36 EP
81 pockets from lot 37 EP
68 pockets from lot 38 EP
150 pockets from lot 43 EP
201 pockets from lot 45 EP
(R. 478.)

There was no evidence whatsoever as to the different lots going to make up the rice on any of the other invoices heretofore or hereafter referred to, but each invoice represented a mix from various lots.

Clean Rice Lot 43:

This lot went into invoices 6634, 6639, 6644, T-126, T-127, T-128, and P-1006 (R. 327-329). No evidence

was introduced as to the component part of those invoices, except invoice 6634 above set forth, but they all consisted of mixes.

Clean Rice Lot 123:

This rice went into the following invoices:

Invoices Nos. 6832, 6833, T-187, T-188, 6840, T-195, 6839, T-200, 6885, 6886, T-201, T-202, T-187, T-188, and T-182 (R. 329 et seq.). No evidence was introduced as to the lots going into these invoices but they were all mixes.

Clean Rice Lot 124:

Affiant does not have the record at this time as to what invoices this lot went into but it was mixed into a number of mixed invoices.

To have traced the cost of the various lots of clean rice that went into each invoice would have been long involved and in fact practically impossible, and then to trace the cost of all rice going into all invoices into which any one of these clean rice lots went would have involved further and innumerable records and evidence.

This is further illustrated when it is noticed that a large number of rough rice lots and clean rice lots were involved, as, for example, in Charge 11 it referred to rough rice lot as high as No. 154 and clean rice lot as high as No. 124.

No charge was made that Bay City Rice Mills did not keep accurate and complete records of its operations.

Nor was any issue made as to the fact that the selling of rice by samples and mixing rice was usual and customary.

For example, Mr. F. A. Farda, who testified as a witness for the Secretary of Agriculture, and who is the Manager of Standard Rice Company, one of the largest rice milling companies in the United States, testified as follows:

"Mr. Farda:

Well, it is not common practice, in fact, it is not a practice to make a mixture just in order to put it in a warehouse and keep it. You make the mixture when you sell your rice, get ready to sell it, you sell it on a sample and then you make your composite mixture and your lots match your sample. *That is a common practice.*

"Mr. Davant:

Is it not a practice to make up these samples practically in the beginning of the season and to send them out as types?

"Mr. Farda:

The practice is to make hand mixes, and to send them samples, and when you sell on the samples you make your actual mixture, make it up." (R. 420-421.)

* * * *

"Mr. Farda:

The usual practice is, you don't make your mix until you have the rice sold." (R. 429-430.)

* * * *

"Mr. Farda:

You never make a mix until you have a sale made, because it would not be of material ad-

vantage to do so because you may not find another market for that particular blend that you make. *You therefore keep your rice in the original lots* to be in a position to make a blend of whatever the trade or market requires at that time." (R. 430.)

In connection with the above lots of clean rice, the Secretary's attorneys tried to make some allocation of the cost of rough rice to the different grades of clean rice produced as between fancy rice and head rice, but this was realized by all to be purely arbitrary allocation of cost without any real or sound basis for the same.

The above proceeding against Bay City Rice Mills was a proceeding before the Secretary of Agriculture to forfeit the license of Bay City Rice Mills for alleged violation of the license. The hearing was held before a representative of the Secretary of Agriculture.

In the foregoing affidavit the figure of 79c above rough rice cost has been referred to. That, as stated, was used only roughly. Under the license, the price for clean rice was to be the price fixed for rough rice plus the conversion charge plus the carload rail rate for transporting rough rice to the miller's mill plus the administrative assessment of 5c per barrel. The conversion charge was 70c per barrel plus 9c per barrel if standard one hundred pound single packages were used for clean rice plus 5c per barrel if cotton or paper interlinings were used. This would make the spread between the rough rice price and clean rice price approximately 89c exclusive of the freight item.

(Sgd.) HOMER L. BRUCE.

Subscribed and Sworn to before me, the undersigned authority, by Homer L. Bruce, this 27th day of October, 1935.

(Sgd.) RAYMOND REILSON,
(Seal) Notary Public in and for Harris County, Texas.

## AFFIDAVIT.

State of Louisiana,
Parish of Orleans.

We, L. J. Bartel, R. F. Gould, and J. J. Mayer, each first being duly sworn, deposes and says:

That we are Deputy Collectors of the Treasury Department, Internal Revenue Service, Louisiana District, working in connection with the rice processing tax division, and that the experience of each in the rice industry, prior to becoming Deputy Collectors, is as follows: L. J. Bartel has had actual experience of approximately twenty years in buying rough rice; operation of rice milling plants, and the distribution of milled rice and by-products. R. F. Gould has had actual experience as follows: Fifteen years with the largest rice millers of the industry as Office Manager, and Chief Accountant; one year as Secretary, and auditor of a rough rice buying agency for New Orleans rice mills, and one and one-half years as traveling auditor for the Millers Committee, an agency operating under a Marketing Agreement for the Southern Rice Industry. J. J. Mayer has had approximately seven years actual experience in buying, selling and grading rough rice and distributing milled rice, and by-products. Our broad experience, as above outlined, reveals the following facts as existing in the rice milling industry:

There is no established market price on rough rice, and the method of buying the rough rice by the millers is a competitive bidding method. Each miller has his buyer, who makes the competitive bid on the basis outlined to him by the management of the mill. The basis is as follows: Rice millers determine the price to make their bid to a producer for his rough rice based on the prevailing market price for milled rice

computing the values to the different grades and by-products obtained from the processing of the rough rice being bid upon. *For example:*

A lot (parcel) of rough rice, estimated to produce (per barrel of 162 pounds) the following articles, grades, classes, etc., when processed, with estimated values as set out for each of the respective grades, classes, etc.:

| | |
|---|---|
| Fancy Head Rice—100 pounds at 4½c | $4.50 |
| Second Head Rice—4 pounds at 3c | .12 |
| Screenings Rice—6 pounds at 2½c | .15 |
| Brewers Rice—2 pounds at 2c | .04 |
| Total yield per barrel—112 pounds. | |
| Total value | $4.81 plus |
| Approximate revenue from by-products (25c per barrel of 162 pounds) | .25 |
| Total revenue | $5.06 |

Competitive bidding basis prior to the processing tax law requiring payment of a processing tax in cash: The above $5.06 is the gross value of milled rice articles and by-products resulting from a 162 pound barrel of rough rice. The mill would deduct from this gross figure the conversion charge, this conversion figure including the mills expense for processing the rough rice, and the estimated profit. Assuming that this conversion would be 60c per barrel, the mill would then bid the producer $5.06, less the 60c conversion; or $4.46 per barrel for the rough rice. The affiants solemnly swear that they have used and seen records of various rice mills establishing the basis as outlined above.

Competitive Bidding Basis after the Processing Tax Law requiring Payment of a Processing Tax in Cash: Since the beginning of the 1933 crop movement, which

become available for market during the month of July, and on which the processing tax applies, the rice millers use the same basis to determine values; however, in addition to deducting the conversion charge, the rice millers deduct also the 1c per pound processing tax on the rough rice, or $1.62 per barrel, and submits his bid to the producer, less this deduction, as follows:

From the value of the same lot of rough rice as above illustrated, estimated to produce milled rice and by-products with gross values of $5.06 per barrel, the rice miller deducts the following: Conversion 60c and processing tax $1.62, or a total of $2.22 per barrel, and makes bid to the producer of $2.84 per barrel for that particular lot of rough rice.

The affiants further solemnly swear that in their practical experience they have prepared, and have seen prepared profit and loss statements for certain given periods other than the entire season; further that these profit and loss statements are prepared on particular lots of rice, which is essential and necessary in their accounting procedure. Should the Agricultural Adjustment Act be held unconstitutional, the affiants state that the rice processors should enjoy the remedy and benefits given by Section 21 (d) of the said Agricultural Adjustment Act, as amended August 27th, 1935, because the records of buying processing and selling kept by the rice mills are adequate enough to properly allocate the cost of various grades of milled rice and its by-products, resulting from the processing of the rough rice; also to properly allocate in this cost, the processing tax, proportionately to the various grades of each lot of milled rice sold by itself alone or mixed. The greater portion of the milled rice sales are straight mill run lots without blending.

The affiants further solemnly swear that they have kept or have seen rice millers' records which reflect correct cost of production, profits from sales, etc., properly allocated to milled rice of various varieties, and grades, and by-products, and similarly allocated as to profits in selling prices, and should the Agricultural Adjustment Act be proven unconstitutional, each rice processor has sufficient records to enable him to recover in accordance with Section 21 (d) of the Agricultural Adjustment Act, as amended.

Summed up, the introduction of the rice processing tax has in no wise altered the customary manner or procedure followed by the rice milling industry in conducting their business.

(Sgd.) L. J. BARTEL,
(Sgd.) R. F. GOULD,
(Sgd.) JAMES J. MAYER.

Subscribed and sworn to before me this 28th day of October, 1935.

(Sgd.) HOMER R. ROBINSON,
Deputy Collector.

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## DECREE.

Filed October 28, 1935.

(Title Omitted.)

This cause came on today to be heard upon the application of the plaintiff for a preliminary injunction, as well as upon the motion filed on behalf of the

defendant to dismiss the bill of complaint, and was argued by counsel for the respective parties;

Whereupon, and upon consideration thereof, and for the reasons orally assigned;

It is Ordered, Adjudged and Decreed that the application for the Preliminary Injunction be and the same is hereby denied;

It is Further Ordered, Adjudged and Decreed that the plaintiff's petition and bill of complaint in all respects be dismissed.

(Signed) JOHN McDUFFIE, Judge.

New Orleans, Louisiana, October 28, 1935.

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## MOTION FOR INJUNCTION PENDING APPEAL.

Filed Oct. 29, 1935.

(Title Omitted.)

Comes now the plaintiff in the above entitled and numbered cause and moves the Court to grant plaintiff an injunction pending appeal for the reason that, unless such injunction pending appeal is granted plaintiff, plaintiff will be compelled to pay the taxes referred to in plaintiff's petition before plaintiff's appeal can be determined by the Circuit Court of Appeals, thus causing it great and irreparable injuries. Plaintiff offers to furnish good and sufficient bond by a solvent surety company in an amount to be fixed by

the Court, if the Court should grant its prayer for injunction pending appeal.

BAKER, BOTTS, ANDREWS
& WHARTON,
By JOHN P. BULLINGTON.

Motion denied.
(Signed) JOHN McDUFFIE, Judge.

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## MOTION OF PLAINTIFF FOR APPEAL AND ORDER ALLOWING SAME.

Filed Oct. 29, 1935.

(Title Omitted.)

On motion of plaintiff in the above cause, and on suggesting to the Court that plaintiff is aggrieved by the decree entered by the Court herein on the 29th day of October, 1935, granting defendant's motion to dismiss, and that plaintiff desires to appeal therefrom with a supersedeas and a stay of proceedings in the District Court, pending appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and

On further suggesting to the Court that said decree is contrary to the law and the evidence for the reasons set forth in the assignment of errors filed in plaintiff's behalf herein; and

On further suggesting to the Court that this motion being filed in open Court on the entry of such decree and in the presence of counsel for defendant, no citation of appeal is necessary or need issue herein;

It is Ordered by the Court that the appeal of plaintiff from the decree entered herein to the United States Circuit Court of Appeals for the Fifth Circuit be and the same is hereby allowed with supersedeas, on appellant's furnishing bond with good and solvent surety, conditioned as required by law and to be approved by the Court in the sum of $250.00 said bond to act as a supersedeas, as well as a bond for costs and damages;

It is Further Ordered by the Court that the appeal of plaintiff from the decree entered herein be made returnable to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on or before November 27th, 1935, and that a certified copy of the record herein be transmitted to said Court of Appeals by the Clerk of this Court, and that no citation of appeal is necessary or need issue herein.

(Signed) JOHN McDUFFIE, Judge.

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## ASSIGNMENT OF ERRORS.

Filed October 29, 1935.

(Title Omitted.)

Comes now plaintiff and says that, in the record in the proceedings of the said Court in the above entitled cause and in the decree made and entered therein on the 28th day of October, 1935, there is manifest error and for error the said plaintiff assigns the following:

(1) The Court erred in sustaining defendant's motion to dismiss plaintiff's Bill of Complaint, because such action was contrary to the law and the evidence.

(2) The Court erred in over-ruling and not sustaining plaintiff's motion for a preliminary injunction because said ruling was contrary to the law and the evidence.

Wherefore, plaintiff prays that said Decree be, in all things, reversed, with instructions to the said District Court to grant plaintiff a preliminary injunction.

(Signed) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON.
Solicitors for Plaintiff.

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## APPEAL BOND.

Filed October 29, 1935.

Know All Men By These Presents, that we Baton Rouge Rice Mill, Inc., as principal, and The Aetna Casualty & Surety Company, Hartford, Conn., as surety, are held and firmly bound unto Rufus W. Fontenot, in the full sum of $250.00, to be paid to the said Rufus W. Fontenot, his attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 29th day of October, 1935.

Whereas, lately, in the District Court of the United States for the Eastern District of Louisiana, judgment was rendered against Baton Rouge Rice Mill, Inc., and in favor of Rufus W. Fontenot, denying plaintiff's application for a Preliminary injunction and dismissing plaintiff's Bill of Complaint, and the said Baton Rouge Rice Mill, Inc., having obtained an appeal to reverse said judgment, citing and admonishing the said Rufus W. Fontenot to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit to be holden at the city of New Orleans, La., in said Circuit Court on the 27th day of November, 1935.

Now the Condition of the above obligation is such that if the said Baton Rouge Rice Mill, Inc., shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its plea good, then the above obligation to be void, else to remain in full force and effect.

BATON ROUGE RICE MILL, INC.,
(Sgd.) BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Principal.
THE AETNA CASUALTY & SURETY COMPANY,
Surety,
By CARL F. WEISS,
Attorney in Fact. (Seal)

Approved October 29th, 1935.
(Signed) RUFUS E. FOSTER, Judge.

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## PRAECIPE.

Filed October 31, 1935.

(Title Omitted.)

To the Honorable H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana:

You will please include in the record upon appeal in the above entitled cause the following documents and procedures:

1. Plaintiff's original bill of complaint.

2. Defendant's motion to dismiss and answer.

3. Order of Court consolidating causes for trial and providing for evidence in cause No. 324 in Equity, Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, etc., to be considered as evidence in this cause.

4. Affidavit of W. M. Reid.

5. Affidavit of Homer L. Bruce.

6. Joint affidavit of L. J. Bartel, R. F. Gould and J. J. Mayer.

7. Decree of the District Court.

8. Plaintiff's motion for injunction pending appeal and order denying same.

9. Motion and order for appeal.

10. Plaintiff's assignment of error.

11. Appeal bond.

12. This Praecipe.

13. Clerk's certificate.

HOMER L. BRUCE,
JOHN P. BULLINGTON,
BAKER, BOTTS, ANDREWS & WHARTON,
By JOHN P. BULLINGTON,
Attorneys for Plaintiff and Appellant.

Approved:
(Sgd.) ROBERT WEINSTEIN,
Asst. U. S. Attorney, Counsel for defendant.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 50 pages contain and form a full, true and complete transcript of the record, assignment of errors and all proceedings in the cause entitled "Baton Rouge Rice Mill, Inc., vs. Rufus W. Fontenot, Individually and as Collector of Internal Revenue for the District of Louisiana," No. 324 In Equity of the Docket of this Court, as made up in accordance with the Praecipe for Transcript copied herein.

Witness my Hand and the seal of the said Court at the City of New Orleans, La., this 2nd day of November, A. D. 1935.

H. J. CARTER, Clerk,

By H. W. NIEHUES,

Deputy Clerk.

(Seal)

[fol. 86] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AT NEW ORLEANS, LOUISIANA

No. 7947

BATON ROUGE RICE MILL, INC., Appellant,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Appellee

MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—Filed November 4, 1935

Comes now the Baton Rouge Rice Mill, Inc., appellant in the above numbered and entitled cause, and after due notice given to the appellee above named, respectfully states to the Court that the said appellant on the 26th day of October, 1935, brought a bill in equity in the United States District Court for the Eastern District of Louisiana, New Orleans Division, entitled Baton Rouge Rice Mill, Inc., plaintiff, v. Rufus W. Fontenot, individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, defendant, and numbered 324 in equity, in the New Orleans Division of said United States District Court. In its bill of complaint in said cause appellant prayed for a temporary restraining order to be [fol. 87] issued immediately, and for a preliminary injunction after notice to the appellee, and for a permanent injunction on the final hearing of said cause, enjoining the appellee from assessing or collecting or attempting to assess or collect from the appellant in any manner whatsoever, whether by lien or jeopardy or distraint proceedings, in court or otherwise, any processing taxes levied under and pursuant to the Act of the Congress of the United States known as the Agricultural Adjustment Act and amendments thereto, or purported to be levied by said Act, upon the appellant for the processing of rice during the month of September, 1935, and for subsequent months, and any interest or penalty on account of appellant's failure to pay said processing tax, and from imposing or giving

notice of intention to impose any lien for said taxes upon the property, real or personal of appellant. That said application for a preliminary injunction was set down for hearing before the Judge of said District Court at New Orleans on Monday, October 28, 1935. The notice thereof was duly waived by the appellee. Prior to said hearing the said appellee filed his motion to dismiss and answer to said bill of complaint, copies of which motion and also of appellant's bill of complaint are contained in the record in this cause filed in this Court.

After a hearing had on appellant's motion for a preliminary injunction and on said motion to dismiss, the Honorable John McDuffie, acting judge of said District Court on October 28, 1935, refused appellant's motion for a preliminary injunction, granted the motion of the appellee to dismiss the said bill of complaint and dismissed the said bill [fol. 88] of complaint, to which appellant herein duly excepted. Thereafter, on the 29th day of October, 1935, the appellant herein in open court and in the presence of counsel for appellee filed its petition for an appeal, which was duly allowed by the said judge of the said United States District Court who tried said cause, and filed at the same time its assignments of errors, and also a cost bond was duly filed and approved by the said judge of said District Court. At the time appellant presented its said petition for appeal, it also petitioned said judge of the District Court to grant it an injunction enjoining the appellee in the manner set out in its request for a preliminary injunction in its bill of complaint, pending the appeal of appellant to this Honorable Court, but the said judge of said District Court on October 29, 1935, refused appellant's said petition and refused to grant appellant said injunction pending said appeal.

Appellant has therefore perfected its appeal to the Circuit Court of Appeals for the Fifth Circuit, making said cause returnable at New Orleans, Louisiana, as provided by law. Appellant has duly caused to be prepared a transcript of the record in said cause and has filed the same, in accordance with law, and within the time allowed by law, in the Clerk's office in the Circuit Court of Appeals at New Orleans, Louisiana.

In said bill of complaint appellant alleged that the amount of processing taxes on account of the rice processed by the

appellant during the month of September, 1935, was $51,259.14, and that under said Agricultural Adjustment Act appellant was required to pay said amount to appellee on or before October 30, 1935, and that appellee was charged with the duty of collecting said tax, and if said tax were [fol. 89] not paid on or before October 30, 1935, appellee would assess said tax against the appellant and serve upon appellant notice and demand for the payment thereof and would allow appellant ten days from receipt of such notice within which to pay the same; that in the event said tax should not be paid within said time, appellee would assess against appellant a penalty equal to 5% of the amount of the tax and interest on the tax at the rate of 1% per month from the due date of the tax until paid; that if the appellant failed to pay the tax within said ten days, appellee would proceed to collect the tax, penalty and interest by filing a notice of lien on all of appellant's property and by distraining upon and selling such of appellant's property as might be necessary to realize the amount of said tax, penalties and interest; and that additional processing taxes for months subsequent to September, 1935, will accrue and be assessed against and collected from the appellant in the same manner as the tax for the month of September.

Appellant alleged that the said processing tax was illegal and unconstitutional, and violated various provisions of the Constitution of the United States in many particulars, more fully set forth in appellant's bill of complaint. The appellant also alleged that under an amendment to said Agricultural Adjustment Act approved on August 24, 1935, a Section 21 (d) was added to said Act, which section provides in substance that appellant should be allowed no recovery of any of said taxes paid, if the same should be illegal or unauthorized, unless appellant established to the satisfaction of the Commissioner of Internal Revenue, and [fol. 90] the Commissioner should so find, that neither appellant nor any person directly or indirectly under appellant's control or having control over appellant, has, directly or indirectly, included such amount in the price of the rice with respect to which it was imposed or of any article processed from the rice with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing rice, and

that the price paid by the appellant or such person for said rice was not reduced by any part of such amount. Appellant in said bill of complaint, alleged, as more fully set out in said bill of complaint, that under said Section 21 (d) it had no adequate remedy at law by which it could recover any part of said taxes if same were unconstitutional and illegal, and that it was impossible, owing to the peculiar conditions existing in the rice milling industry and in the purchase, milling and sale of rice, for appellant to discharge the burden placed upon it by said Section 21 (d), all as more fully set out in appellant's bill of complaint.

Appellant further alleged that in said amendment of August 24, 1935, a new section known as Section 21 (a) was added to said Agricultural Adjustment Act, which in substance provided that no suit to enjoin the collection of said processing taxes should be maintained in any court. Appellant further alleged that said section was not intended to apply, and did not apply, to the injunction prayed for by appellant, inasmuch as appellant had no adequate remedy at law. Appellant further alleged that if said section should be interpreted as prohibiting the injunction [fol. 91] prayed for by appellant, then the said section, together with the other provisions of said Act, was invalid and in violation of the Fifth Amendment to the Constitution, that no person shall be deprived of his property without due process of law, in that said illegal and unconstitutional taxes would be collected from appellant and appellant would have no remedy by which he could recover taxes and would have no remedy to prevent the collection of said unlawful taxes and would be forever deprived of the right to test the constitutionality of said taxes.

Appellant further alleged that said Section 21 (d) denied the appellant a complete and adequate remedy at law for the various other reasons set forth in said bill of complaint.

At the hearing before the District Judge appellant introduced in evidence the affidavit of W. M. Reid, Executive Secretary of The Rice Millers Association, a man of twenty-six years experience in the rice business, in which affidavit he set out fully and in detail the methods of conducting the rice business and the manner in which the rough rice market and the clean rice market is made, showing that it would be utterly impossible for any rice miller to accurately determine whether he had made a profit or a loss on any

given transaction, much less prove whether he had passed the tax, or any part thereof, on. Appellant also introduced in evidence the affidavit of Homer L. Bruce, a practicing attorney at the bar at Houston, Texas, setting out in detail the proceedings under a complaint brought by the Secretary of Agriculture to revoke the license of a rice mill under the Act in effect prior to the present Act. The Secretary of Agriculture sought to revoke the license of this mill for [fol. 92] failure to sell clean rice and rice products processed from rough rice at a price approximately 79c higher than the price paid for the rough rice. The affidavit showed that although the Government was able to prove the cost of the rough rice and to trace the particular rough rice into various "mixes" of clean rice and the price procured for these "mixes" of clean rice it was never able to prove that the price procured for the clean rice processed from the particular lot of rough rice was not 79c more than the price paid for the rough rice because of the fact that clean rice is customarily sold in "mixes" of various lots of rice and there was no way to allocate the price procured for the mixed rice sold to the various lots of rough rice which went into the mix.

In the meantime, appellant alleges that for the foregoing reasons and those set forth in its said bill of complaint in said cause, and because the judge of said court in his said order dismissed said bill of complaint and refused to grant appellant the injunction prayed for pending the appeal in this case, the appellee herein will, to the irreparable damage and loss of the appellant herein, proceed to collect the said taxes for September, 1935, which are now due and unpaid, from appellant, and said taxes for subsequent months, unless restrained by a preliminary injunction granted by this court. The appellant alleges that not only has it no complete remedy at law, but in fact no remedy at law at all, for the reasons hereinabove set forth and set forth more in detail in said bill of complaint, that it is faced with the alternative of paying the tax with the certainty that no remedy at law exists for its recovery in case it be held that it was unconstitutionally assessed, or of refusing to pay [fol. 93] and running the risk of becoming liable for the heavy civil and criminal penalties provided in the Act, and that the said judge of said District Court should not have dismissed said bill of complaint, but should have over-

ruled the same, and upon the hearing should have granted the preliminary injunction as prayed for in said bill of complaint.

Appellant would further show that there is now pending in the Supreme Court of the United States a case involving the constitutionality of the said Agricultural Adjustment Act, being the same case in which the Circuit Court of Appeals for the First Circuit declared the Act to be unconstitutional, and that the Supreme Court, according to press dispatches, has set said cause for oral argument on Monday, December 9, 1935; that a decision by the Supreme Court of the United States upon the validity of the said Act may be expected within a reasonable time thereafter; that the first benefit payment to farmers provided for in said Act has been made, and that under the standard form of contract between the Secretary of Agriculture and rice farmers no further payment is due until such time after December 1, 1935, as the Secretary shall determine and declare what further amount of benefit payments shall be made and when they shall be made; that the taxes to be collected under said Act are for the purpose of making these benefit payments and that since the Secretary of Agriculture need make no further benefit payments until such time after December 1, 1935, as may be fixed by him, the delay of the Government in collecting these taxes which might be occasioned by the granting of the injunction prayed for herein will not occasion any injury to the Gov-
[fol. 94] ernment nor will it unduly interfere with the achievement of the program set out in said Act if the Act be held constitutional. On the other hand, as hereinabove alleged, great and irreparable damage will be done to plaintiff in the event the law is held unconstitutional unless the injunction hereinafter prayed for is granted.

Appellant further shows that unless an injunction pending appeal be granted so as to preserve the *status quo*, the subject-matter of the suit will be lost and the jurisdiction of this Honorable Court defeated. Such injunction is necessary to preserve the jurisdiction of this Honorable Court, and in order that appellant may enjoy the just fruits of a favorable decision on this appeal.

The appellant states that it is ready and willing to give any reasonable bond or other security that may be required by any order of this Court, including the deposit from

month to month of the amount of tax due, in a depository to be designated by the court, and therefore prays that this Court make an order granting appellant a preliminary injunction enjoining and restraining the appellee from assessing or collecting or attempting to assess or collect from appellant in any manner whatsoever, whether by lien or jeopardy or by distraint proceedings, in court or otherwise, the said processing taxes for the month of September and subsequent months and any other processing taxes under and pursuant to said Agricultural Adjustment Act upon rice processed by appellant, and any interest or penalty on account of appellant's failure to pay said processing taxes, and from imposing or giving notice of intention to [fol. 95] impose any lien for said taxes upon the property, real or personal, of the appellant, pending the hearing of appellant's appeal in this case and upon such conditions and terms as to this Court may seem just.

Homer L. Bruce. John P. Bullington. Baker, Botts, Andrews & Wharton, of Counsel.

[fol. 96] *Duly sworn to by John P. Bullington. Jurat omitted in printing.*

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[fol. 97] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 7947

BATON ROUGE RICE MILL, INC.,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL—November 5, 1935

Upon the authority of Rickert Rice Milling Company, Inc., vs. Rufus W. Fontenot, etc., the application for injunction in the above numbered and entitled case is denied.

[fol. 98] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7937

RICKERT RICE MILLING COMPANY, INC., Appellant,

versus

RUFUS W. FONTENOT, Acting Collector of Internal Revenue, Appellee

Appeal from the District Court of the United States for the Eastern District of Lousiana

Motion for Preliminary Injunction Pending Appeal

Before Foster and Sibley, Circuit Judges, and Strum, District Judge

OPINION—November 5, 1935

By the COURT:

On consideration of the application for an injunction to stay collection of taxes levied under the provisions of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, the Court is of the opinion that the taxpayer has a remedy at law to recover back any taxes illegally [fol. 99] exacted and, further, that the provisions of the Act as amended deprive the Court of jurisdiction to grant injunctive relief.

It is ordered that the application be Denied.

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[fol. 100] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 101] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 25, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is

granted, and the case is assigned for argument on Monday, December 16, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 40,134. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 580. Baton Rouge Rice Mill, Inc., petitioner, vs. Rufus W. Fontenot, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana. Petition for a writ of certiorari and exhibit thereto. Filed November 11, 1935. Term No. 580, O. T., 1935.